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**Corporate Governance Implications of
Foreign Stock Exchange Listing (or
Cross-listing) for China's Corporations**

Shuang MA

**A Doctoral Thesis Submitted to Durham University in Partial
Fulfilment of the Requirements for the Degree of Doctor of
Philosophy (Law)**

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Abstract

The first company from the People's Republic of China listed outside Mainland China was an H-share enterprise listed on the Hong Kong Stock Exchange on July 15, 1993. In the twenty years since then, the rapid development of the Mainland's economy has created a climate in which China's companies can internationalise, and some of China's heavyweight State-owned Enterprises (SOEs) even tried to accelerate their overseas investment by means of transnational acquisitions and mergers. This thesis undertakes a detailed theoretical and empirical study exploring the corporate governance practices of Chinese companies that have listed on foreign stock exchanges; of particular interest has been the influence that foreign listing has exerted on the corporate governance practices of these Chinese companies. Several experts and scholars have provided valuable criticisms and remarks as part of the fieldwork for this thesis. A number of major propositions concerning the corporate governance of overseas listed Chinese companies are discussed and fieldwork data has been collected to test these propositions.

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ABBREVIATIONS USED

ADRs	American Depository Receipts
CCP	Chinese Communist Party
CEO	chief executive officer
CFO	chief financial officer
China Mobile	China Mobile Limited Company
Chalco	Aluminium Corporation of China Limited
CMCC	China Mobile Communications Corporation
CNOOC Group	China National Offshore Oil Corporation
CNOOC Ltd	China National Offshore Oil Corporation Limited
CNPC	China National Petroleum Corporation
COEs	Collectively Owned Enterprises
CPPCC	Chinese People's Political Consultative Conference
CSR	corporate social responsibility
CSRC	China Securities Regulatory Commission
FASB	United States Financial Accounting Standards Board
GDP	Gross Domestic Product
HKEx	Hong Kong Stock Exchange
IPO	Initial Public Offering
JSC	Joint Stock Company
LLC	Limited Liability Company

LPs	legal person shares
LSE	London Stock Exchange
MOF	Ministry of Finance (Mainland China)
NASDAQ	NASDAQ Stock Market
NYSE	New York Stock Exchange
OECD	Organization for Economic Co-operation and Development
PetroChina	PetroChina Company Limited
Ping An	Ping An Insurance (Group) Company of China Limited
PRC	People's Republic of China
QFII	Qualified Foreign Institutional Investor
RMB	Renminbi (Mainland China's Yuan ¥)
SASAC	State-owned Assets Supervision and Administration Commission of the State Council
SEC	Securities and Exchange Commission of U.S.
SFC	Securities and Futures Commission of Hong Kong
Sinopec Group	China Petrochemical Corporation
Sinopec Limited	China Petroleum & Chemical Corporation Limited
SOE(s)	state-owned enterprise(s)
SSE	Shanghai Stock Exchange
SZSE	Shenzhen Stock Exchange
Tsingtao Brewery	Tsingtao Brewery Company Limited

TVEs	township and village enterprises
U.K.	United Kingdom
U.S.	United States of America
WTO	World Trade Organization

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CHAPTER 1. OVERVIEW OF KEY ISSUES

Tsingtao Brewery Corporation was the first Chinese company to list outside Mainland China on July 15, 1993; this was as an H-share enterprise company listed on the Hong Kong Stock Exchange. In the wake of this listing, there has been a dramatic and growing trend towards overseas listing and cross-listing on the Mainland. Therefore, it is arguable that the corporate governance standards and practices of most off-shore-listed China's enterprises have moved forward over the past two decades. Nevertheless, the general impression is that most Mainland-incorporated¹ corporations still face a turbulent future in the light of blockholder control and poor performance of management, together with the legacy of political reform, despite their shares having been traded on highly developed foreign stock exchanges. Several major issues have been highlighted in the literature.

Theoretically speaking, the shareholders' general meeting is the key means of exercising shareholder rights, playing a part in corporate decision making both for the controlling and minority shareholders. However, there is no real incentive for minority shareholders and public shareholders in Mainland companies to participate in such corporate meetings due to the large proportion of non-circulating State Shares and Legal Person (LP) Shares, let alone an incentive to exercise their own rights. In recent years, more stringent measures have been introduced to give

¹ China, Mainland China and Mainland in this thesis refer to the People's Republic of China (PRC), excluding Hong Kong, Macau and Taiwan; the term "Chinese" and "China's" will be used interchangeably.

minority and public shareholders the opportunity of referring to company records, and even questioning directors or supervisors, so as to encourage them to become more actively involved in corporate management.² From a practical point of view, such vague provisions are still unable to realistically protect the interests of minority shareholders.

In most Mainland corporations, ordinary shareholders cannot receive desirable compensation through civil remedies when directors and senior officers behave inappropriately or breach their duties as prescribed by the Company Law and by the corporation's articles of association. Thus, shareholder representative legal proceedings were introduced by the 2006 Company Law of China as a vehicle for ordinary shareholders to be able to file lawsuits in their own name when the interests of the corporation are being infringed.³ Moreover, shareholders can also institute direct lawsuits so as to recover their own losses.⁴ Unfortunately, such remedies are still quite vague and hence cannot provide wholly satisfactory solutions for ordinary

² People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 98 and Article 151, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

³ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 152, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

⁴ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 153, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

shareholders.

The board of directors in most Chinese listed corporations lack real independence, while there is insufficient supervision over directors, supervisors and other senior officers. Furthermore, some recent research appears to suggest that the mandatory presence of independent directors in Chinese companies does not have the intended effect upon corporate performance.⁵ In fact, most of China's major listed enterprises have been controlled by a "key man", i.e., by the controlling shareholder, by the representative of the controlling shareholder or by another senior officer such as the company chairman. As expected, this kind of insider control model found in Chinese companies has been criticised by western scholars. Although China's regulatory institutions have issued several circulars requiring the mandatory introduction of independent directors onto the board,⁶ it is virtually impossible for independent directors or representatives of employees to play a substantial role in corporate governance matters in China.

The 2006 Company Law of China provides that a supervisory board, comprising a minimum of three supervisors, must be established in every listed enterprise.⁷ In

⁵ Clarke, Donald C., "The Independent Director In Chinese Corporate Governance", *Delaware Journal of Corporate Law*, Vol. 31, No. 1, 2006, p. 217.

⁶ People's Republic of China, *Establishment of Independent Director Systems by Listed Companies Guiding Opinion* (2001 Order No.102 of China Securities Regulatory Commission of the People's Republic of China), Article 3, promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of August 16, 2001, available at: <http://www.chinalawandpractice.com/Article/1880871/Channel/9950/Establishment-of-Independent-Director-Systems-by-Listed-Companies-Guiding-Opinion.html>, accessed January 10, 2011.

⁷ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 118, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and

theory, the supervisory board should play a role paralleling that of the board of directors. In reality, the power of the supervisory board is quite weak. According to a recent investigation using grounded theory methodology, it was found that the roles of supervisory boards in the Chinese corporate environment could roughly be classified into four categories: (1) as an honoured guest, (2) as a friendly advisor, (3) as a censored watchdog or (4) as an independent watchdog;⁸ with the supervisory board actually only being able to perform its role of supervision in very limited cases. Therefore, it could be said that the supervisory boards in most of China's listed corporations are dysfunctional. Through the inheritance of traditional ideas in China's company law, Chinese corporations are in theory always concerned with the shareholders' interests. The board of directors is generally seen as an organ for maximising the interests for shareholders, but the role of the supervisory board has largely been neglected. To a certain degree, the supervisory board in most Chinese companies is just an affiliated arm of the board of directors, and is controlled through the shareholders' meetings.

I. THE MAJOR INCENTIVES FOR OFF-SHORE LISTING BY PRC CORPORATIONS

Fundamentally, companies in the People's Republic of China (PRC) see off-shore

effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

⁸ Xiao, Zezhong; Jay, Dahya and Lin, Z. Jun, "A Grounded Theory Exposition of the Role of the Supervisory Board in China", *British Journal of Management*, Vol. 15, No. 1, 2004, p. 39.

listing as a desirable avenue for seeking financing so as to maximise their own interests. Paradoxically, due to certain deficiencies in the Mainland's capital markets, off-shore listing could also be seen as a realistic financing option for most of the PRC's small and medium-sized enterprises (SMEs). And to some degree, western investors have always had a strong desire to take up investment opportunities in emerging markets, despite the recent recession. To a certain degree, the IPO and back-door listing of PRC corporations on foreign stock exchanges caters for this kind of appetite.

Generally, China's major State-Owned Enterprises (SOE)⁹ have good opportunities to obtain domestic bank loans. It is also likely that large mainland SOEs will list A-shares and B-shares in domestic stock exchanges like the Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE). When taking such factors into account, it is arguable that the drivers of overseas listing for major SOEs in the PRC are more complex than the need to raise new funds.

Generally, listing on foreign stock exchanges can bring mainland SOEs larger amounts of capital. The current Shanghai Stock Exchange (SSE) traces its history back to November 26, 1990, while the Shenzhen Stock Exchange (SZSE) was opened slightly earlier, on July 3 of the same year. In 2009, the combined market

⁹ "China's SOE" in this thesis refers to China's state sole funded companies and enterprises, with the state as the biggest shareholder.

capitalisation of the SSE and SZSE was approximately RMB¹⁰ 14,607,500,727,746 (US\$ 2,137,474,499,231).¹¹ In actual fact, this is an exaggerated figure since it includes the supposed market value of non-circulating Legal Person (LP) shares and state shares. Moreover, LP and state shares are generally traded at heavy discounts on the price of tradable shares in real transactions. In March 2009, the tradable market capitalisation of the SSE and SZSE were only RMB 4,238,400,000,000 (US\$ 620,193,151,887),¹² and RMB 1,692,627,658,722 (US\$ 247,677,444,940),¹³ respectively. Hence the total tradable market capitalisation of the SSE and SZSE (US\$ 867,870,596,827) was only one-thirtieth of the size of the NYSE Euronext (US\$ 25,000,000,000,000) in 2009.¹⁴ By the end of 2004, the total market capitalisation of all off-shore listed PRC corporations amounted to US\$ 349,200,000,000.¹⁵ In terms of market capitalisation, listing on foreign stock exchanges is still a good option for most Mainland SOEs in spite of the significant developments in the domestic capital market in recent years.

¹⁰ The Renminbi (RMB, also “yuan”, sign: ¥) is the official currency of Mainland China, its exchange rate against the US dollar stood at 6.3 yuan per US dollar in 2012.

¹¹ Figures taken from “Trading Summary” Section of Shanghai Stock Exchange website (Updated to February 27, 2009), available at: <http://www.sse.com.cn/sseportal/webapp/datapresent/TradingSummariesMonthlyAct?reportName=BizCompTradingSummariesMonthlyRpt>, accessed March 14, 2009; “Market Statistics” Section of Shenzhen Stock Exchange website (updated to March 13, 2009), available at: <http://www.szse.cn/main/en/MarketStatistics/MarketOverview/>, accessed March 14, 2009.

¹² Figures taken from “Trading Summary” Section of Shanghai Stock Exchange website (Updated to February 27, 2009), available at: <http://www.sse.com.cn/sseportal/webapp/datapresent/TradingSummariesMonthlyAct?reportName=BizCompTradingSummariesMonthlyRpt>, accessed March 14, 2009.

¹³ Figures taken from “Market Statistics” Section of Shenzhen Stock Exchange website (updated to March 13, 2009), available at: <http://www.szse.cn/main/en/MarketStatistics/MarketOverview/>, accessed March 14, 2009.

¹⁴ Figures taken from “Market Capitalization of NYSE Companies” Section of New York Stock Exchange Euronext website, available at: <http://www.nyxdata.com/nyxedata/default.aspx?tabid=115>, accessed March 14, 2009.

¹⁵ Figures taken from State-owned Assets Supervision and Administration Commission of Shanghai Municipal Government website, available at: <http://www.shgzw.gov.cn/gb/gzw/gzjg/gzsd/userobject1ai39256.html>, accessed March 14, 2009.

The off-shore listing of China's major SOEs can also introduce foreign experienced investors to China's companies, providing considerable business expertise in corporate management for the day-to-day administration of SOEs. Since the daily management and corporate governance of China's listed SOEs are bound up with the interests of foreign investors, such investors are likely to introduce valuable practical experience, modernised management structures and transparent financial controls to China's SOEs, so as to maximise their own share of the SOE's profits. Such measures can facilitate reform of China's SOEs and enhance their corporate governance, since there is a widespread lack of desirable business management practices in most of China's SOEs. In the Mainland's increasingly open markets, SOEs have to be more competitive to outmanoeuvre their fast-moving private counterparts, and therefore advanced western business processes will be very helpful for them. Such improvements in their market-orientation may also provide a solid foundation for China's SOEs to allow them to compete in the global markets. In some sense, this parallels and supplements China's central government's¹⁶ overall strategies for SOE reform.

On the other hand, accessing domestic bank loans is quite challenging for most Chinese medium-sized state-owned enterprises, and privately owned companies. The credit obtained by the private sector accounted for only one per cent of the loans

¹⁶ While Mainland China is still a totalitarian statist state under the control of the Communist Party, "Communist Party" will be used as an interchangeable term for "China's government" or "China's central government" in most cases in this thesis.

from the national banking system by the end of 2000.¹⁷ This reality could also provide a plausible explanation for the recent rise of informal finance on the Mainland; this is sometimes described as the shadow banking system. Destabilising financing practices of government controlled domestic banks were a political product arising under financially repressive circumstances.¹⁸ Thus, foreign public markets and overseas private placements have become good mechanisms for raising funds for those enterprises that cannot gain sought after capital from the domestic markets.

In reality, the shortage of funding is gradually becoming a constraint on the growth or the further development of most Chinese companies, especially in a period of rapid economic expansion. By June 2007, the number of Chinese SMEs had risen to 42,000,000, accounting for 99 per cent of the totality of PRC companies.¹⁹ The total value of all goods and services produced by the PRC's SMEs amounted to 60 per cent of the Mainland's Gross Domestic Product (GDP).²⁰ In addition, the tax contributions of Chinese SMEs equalled around 50 per cent of the total taxation paid by Mainland companies in almost every tax year up to 2007.²¹ Currently, the Chinese government is aiming to achieve full employment; however, a large

¹⁷ Figures taken from *Statistical Yearbook of China 2000*, China Statistical Press, Beijing.

¹⁸ Tsai, Kellee S., *Back-Alley Banking: Private Entrepreneurs in China*, Cornell University Press, Ithaca, 2002, p. 6.

¹⁹ Figures taken from The Central People's Government of the People's Republic of China's website, "The Figure of Small and Medium-Sized Chinese Enterprises Accounts for 99% of the Totality of PRC Companies" (updated to June 7, 2007), available at: http://www.gov.cn/wszb/zhibo78/content_639715.htm#, accessed March 11, 2009.

²⁰ Figures taken from The Central People's Government of the People's Republic of China's website, "The Figure of Small and Medium-Sized Chinese Enterprises Accounts for 99% of the Totality of PRC Companies" (updated to June 7, 2007), available at: http://www.gov.cn/wszb/zhibo78/content_639715.htm#, accessed March 11, 2009.

²¹ Figures taken from The Central People's Government of the People's Republic of China's website, "The Figure of Small and Medium-Sized Chinese Enterprises Accounts for 99% of the Totality of PRC Companies" (updated to June 7, 2007), available at: http://www.gov.cn/wszb/zhibo78/content_639715.htm#, accessed March 11, 2009.

proportion of unemployed workers have actually obtained their employment in SMEs.²²

Overall, China has maintained a high level of urban economic growth over the last two decades. Since the pioneering days of economic reform in 1978, China's average Gross Domestic Product (GDP) rates increased from some 4 per cent to 9.6 per cent by the end of 2005.²³ In particular, China even achieved a high average annual GDP growth of over 10 per cent from 1990 to 2001;²⁴ while from 2002 to 2006, China's average GDP growth was 10.3 per cent, which was much higher than the average level in most developed countries.²⁵ In 2005, China was ranked fourth in economic size in the world, just falling behind the U.S., Japan, and Germany.²⁶ In such an economic climate, most small and medium-sized mainland companies are in real need of considerable amounts of funding so as to enable them to invest in the latest technologies, enlarge the scale of their production and increase their market share.

Theoretically, commercial banks should be the first source of funding for most small and medium-sized companies. However, this is not the reality for Mainland

²² Figures taken from The Central People's Government of the People's Republic of China's website, "The Figure of Small and Medium-Sized Chinese Enterprises Accounts for 99% of the Totality of PRC Companies" (updated to June 7, 2007), available at: http://www.gov.cn/wszb/zhibo78/content_639715.htm#, accessed March 11, 2009.

²³ Brandt, Loren and Rawski, Thomas G., *China's Great Economic Transformation*, Cambridge University Press, Cambridge, 2008, Chapter 1; Holz, Carsten A., "China's Economic Growth 1978-2025: What We Know Today about China's Economic Growth Tomorrow", *World Development*, Vol. 36, Issue 10, 2008, p. 1665.

²⁴ Figures taken from People's Daily Online, "WTO Membership to Boost China's GDP Growth" (updated to December 11, 2001), *People's Daily Online*, December 11, 2001, available at: http://english.peopledaily.com.cn/200112/11/eng20011211_86434.shtml, accessed March 12, 2009.

²⁵ Figures taken from Chung, Olivia, "Official Chinese Wage Figures Belie Reality" (updated to July 31, 2007), *Asia Times Online*, July 31, 2007, available at: http://atimes.com/atimes/China_Business/IG31Cb01.html, accessed March 12, 2009.

²⁶ *Statistical Yearbook of China 2006*, China Statistical Press, Beijing, p. 734 and p. 1025.

companies, and the opposite is often true. With the banking sector in the Mainland dominated by the four State-Owned Commercial Banks (SOCBs),²⁷ these SOCBs actually have quite poor risk control capabilities. It has been observed that most of China's commercial banks still lack a mature methodology for credit risk management, whereas independent and professional risk management functions are also scarce.²⁸ Hence, an extremely complicated process for bank loan applications has been formulated for SMEs, while there is no desirable solution to the issue of growing non-performing loans (NPLs) to SMEs, as the legal and credit systems of the Mainland are relatively underdeveloped. On an optimistic note, according to one of the bank's officials, the People's Bank of China (PBOC), China's central bank, is considering constructing a credit-rating system for SMEs.²⁹ However, there is still a rather long process to be followed before this new idea can be implemented, although the PBOC has been moving in the right direction. In actual fact, almost every one of China's commercial banks is very cautious about granting loans to SMEs, and only very few SMEs can successfully obtain the bank loans they require.

II. KEY ISSUES OR PROPOSITIONS IN THIS THESIS

Generally, patterns of corporate governance of listed companies in the world is

²⁷ Cousin, Violaine, *Banking in China*, Palgrave Macmillan, New York, 2007, p. 121; the four SOCBs are the Industrial and Commercial Bank of China, China Construction Bank, Bank of China and Agricultural Bank of China.

²⁸ Zhang, Ran and Hou, Guangming, "IRB Approach and Credit Risk Management in China's Commercial Banks", *Journal of Beijing University of Technology*, Vol. 7, Issue 2, 2005.

²⁹ China Knowledge, "China's Central Bank Mulls SME Credit Rating System", available at: http://www.chinaknowledge.com/Newsires/News_Detail.aspx?type=1&NewsID=19146, accessed March 13, 2009.

divided into two major categories: outsider control systems (as found in Anglo-American systems) and insider control systems, (as in Germany and Japan). Outsider systems, typified by companies in the United Kingdom and the United States in general, have a heavy reliance on the securities market for capital raising, as the shareholdings of most major corporations are widely-dispersed and control of companies is largely in the hands of their managers and not shareholders. In contrast, shareholdings in countries with insider control systems are more concentrated, and significant blockholders (such as large banks) often engage in the control and funding of these corporations. Besides, the relationship between management and blockholders is noticeably stronger in insider systems. Japan and Germany are usually regarded as representative of insider systems.³⁰

By a broadly similar method, Mark Roe also categorised selected nations into two broad groups,³¹ while some scholars have reviewed the theory developed by Roe as implying that a socialist political system should produce an insider system of corporate ownership and control.³² Several features of China's securities markets that can support Roe's theory have been enumerated in a recent study.³³ Mainland China had been described by Mark Roe as a totalitarian regime, and hence it was

³⁰ Mayer, Colin, "Stock-markets, Financial Institutions, and Corporate Performance", in *Capital Markets and Corporate Governance*, Dimsdale, Nicholas and Prevezer, Martha edited, Oxford University Press, Oxford, 1994, p. 179; Dignam, Alan and Galanis, Michael, "Australia Inside-Out: the Corporate Governance System of the Australian Listed Market", *Melbourne University Law Review*, Vol. 28, No. 3, 2004, p. 623.

³¹ Roe, Mark J., "Political Preconditions to Separating Ownership from Corporate Control", *Stanford Law Review*, Vol. 53, No. 3, 2000, p. 539 and p. 543.

³² Dignam, Alan and Galanis, Michael, "Australia Inside-Out: the Corporate Governance System of the Australian Listed Market", *Melbourne University Law Review*, Vol. 28, No. 3, 2004, p. 623.

³³ De Jonge, Alice, *Corporate Governance And China's H-Share Market*, Edward Elgar Publishing, Cheltenham, 2008, p. 234.

excluded from his analysis as it was contended that there was a lack of the necessary institutions to support an advanced economy in such centrally controlled countries.³⁴ Moreover, it was said that an extreme statist regime would not facilitate or even impede the normal functioning of such basic institutions.³⁵

Arguably, the system of corporate governance in Mainland China can be characterised as an “insider system”, as most publicly held corporations on the Mainland have very concentrated ownership and control systems. Admittedly, the Chinese regulatory authority benefited from the experience of continental Europe during the process of designing China’s current legal system. In broad terms, the supervisory board in China’s corporate law system was arguably a transplantation of a model derived from the German insider system. Nevertheless, it was suggested by some scholars that Anglo-American governance structures had been predominantly imposed in developing China’s modern corporate system.³⁶

To a certain extent, the ideological differences between the Mainland and developed democratic nations can also be ignored in terms of the issue of corporate governance, since hundreds of Mainland enterprises have now listed on overseas stock exchanges (see Appendix I-IV). Henceforth, such Mainland enterprises were governed by the same strict codes of conduct found in foreign stock exchanges, which must be

³⁴ Roe, Mark J., “Political Preconditions to Separating Ownership from Corporate Control”, *Stanford Law Review*, Vol. 53, No. 3, 2000, p. 539 and p. 578.

³⁵ Roe, Mark J., “Political Preconditions to Separating Ownership from Corporate Control”, *Stanford Law Review*, Vol. 53, No. 3, 2000, p. 539 and p. 578.

³⁶ Tam, On Kit, *The Development of Corporate Governance in China*, Edward Elgar, Cheltenham, 1999, p. 25.

observed by domestic and foreign corporations listed in the country in which the foreign stock exchange is based. Thus, it is possible for almost every Mainland listed corporation to be able to derive substantial benefits from foreign listing on advanced stock exchanges, as marketplace rules in such exchanges are more independent and enforceable than those on the Mainland.

Considerable improvement has therefore occurred in the overall quality of corporate governance of Mainland companies after their foreign listing. This is due to stock exchanges such as the NYSE, NASDAQ and the London Stock Exchange, etc., all having sophisticated “binding” rules in place, such as *the comply or explain* corporate governance guidelines, that are aimed at maintaining high standards of corporate responsibility, integrity and accountability to shareholders. In fact, most Mainland corporations have undergone a restructuring in the process of their foreign listing applications, and their corporate governance has been subsequently improved. However, the other reality is that the corporate governance of listed Mainland corporations has probably never radically changed, since their shareholdings are still firmly concentrated in the hands of a small number of blockholders (who are often state-controlled). Thus, corporate democracy and disclosure are still quite weak in these companies as most members of their senior management are appointed by the blockholders. Moreover, their independent directors are unable to play a major role. On the boards of these companies, there is a strong connection between management and the blockholders; this most distinctive feature of state-owned enterprises has

hardly changed, as the management was still accountable to the state as blockholder.

The U.S. and U.K. stock exchanges are the first choice for overseas listing for most Mainland Chinese enterprises, as their corporate governance rules have a reputation for strictness and transparency. Listing on such exchanges will certainly raise the enterprises' international profile, in view of the considerable funds that can be raised thereby. Nevertheless, improvements in the corporate governance practices of Mainland enterprises are arguably to some degree a reflection of their ostensible or superficial compliance with foreign regulatory requirements that has been necessary in order to adapt to the higher standards of corporate governance in foreign exchanges, which aim to enhance market efficiency and to protect shareholders of listed companies. Most overseas listed Mainland corporations arguably still operate in fundamentally the same way as they did prior to seeking foreign listing.

Fortunately, it seems that the introduction of strategic partnerships with foreign well-regarded enterprises has also played a positive role in the improvement of the corporate governance of the Mainland's corporations during the last decade. *The Measures for the Administration of Strategic Investments in Listed Companies by Foreign Investors* were promulgated on 31 December, 2005,³⁷ and foreign investors can accordingly make medium and long-term strategic investments in the Mainland's listed companies which have completed their reform regarding the separation of

³⁷ Order of the Ministry of Commerce, the China Securities Regulatory Commission, the State Administration of Taxation, the State Administration for Industry and Commerce and the State Administration of Foreign Exchange (2005) No.28, and effective as of January 30, 2006.

equity ownership and trading rights. This means that foreign investors can also own a minority strategic stake in large PRC state-owned companies. Nevertheless, this raises another problem concerning the distribution of profits, as some observers are concerned that foreign investors had benefited greatly on an annual basis from their strategic investments, but that their expertise and experience had contributed little to the actual improvement of corporate governance in PRC corporations when contrasted with the substantial profits that they had realised. This then provides the backdrop to the key propositions that this thesis will explore.

KEY PROPOSITIONS IN THIS THESIS:

- (1) China's stock exchanges largely reflect an insider control system.
- (2) China's corporate governance patterns reflect insider control system patterns.
- (3) Political factors determine the nature of corporate governance in China's listed companies.
- (4) Foreign listing of China's companies will improve some aspects of their corporate governance.
- (5) Traditional Chinese corporate governance ideas will be likely to remain strong in foreign listed Mainland companies.

III. SUMMARY

The rapid development of the Mainland's economy has created a climate in which

China's companies can internationalise, while some very large Chinese SOEs are also trying to accelerate overseas investment by means of transnational acquisitions and mergers.³⁸ Overseas listing is undoubtedly one of the major approaches used by China's companies to implement their globalisation strategies. Thus, more and more of China's companies, especially China's major SOEs, have endeavoured to float on foreign stock exchanges in recent years.

However, most of China's companies are still trailing poorly in corporate governance, which is partly due to the unsatisfactory legal and regulatory framework in China. As some Chinese companies have been listed on foreign stock exchanges for many years, the corporate governance implications of overseas listing and cross-listing of China's companies may well be worthy of further exploration.

Given that the development of corporate governance closely parallels advances in stock markets, the history of stock markets will be explored in the next chapter. Furthermore, the next chapter will also explore the function and role of stock markets, as well as the corporate governance implications of the history of stock markets. Despite the fact that the history of the Mainland's stock markets is relatively short, there is still a need for it to be carefully studied, as it deepens our understanding of the pathways that have shaped the current system of corporate

³⁸ Yeung, Arthur; Xin, Katherine; Pfoertsch, Waldemar and Liu, Shengjun, *The Globalization of Chinese Companies: Strategies for Conquering International Markets*, John Wiley & Sons (Asia), Singapore, 2011, p. 2.

governance in foreign-listed Chinese companies.³⁹

³⁹ The Shanghai Stock Exchange was the 6th largest stock market in the world by domestic market capitalisation, at US\$ 2,357,423.3 million as of the end of 2011, and Shenzhen Stock Exchange was the world's 13th largest stock market by domestic market capitalization, at US\$ 1,054,685.0 million by the end of 2011; see World Federation of Exchanges, Statistics, Annual Statistics Reports, 2011, Equity Markets: Domestic Market Capitalization, available at: <http://www.world-exchanges.org/statistics/annual-statistics-reports/2011/equity-markets>, accessed June 8, 2012.

CHAPTER 2. THE ROLE OF STOCK MARKETS AND CORPORATE ACTIONS

I. A BRIEF HISTORY OF STOCK MARKETS

Essentially, equity or stock markets generally refer to places where tradable securities, foreign exchange, futures, and options can be bought and sold. According to the historian Fernand Braudel, almost every form of trade association had been built by Muslim and Jewish merchants in Cairo by the eleventh-century, while the modern securities market could be traced back to medieval Italy, as transferrable securities already existed in the city states of Venice, Genoa and Florence at that time.⁴⁰ Venice compelled its residents to lend funds to the authorities in 1171, but the creditors could obtain certain interest at 5 per cent per annum by virtue of the bonds issued by the authorities. This event is generally regarded as the origin of the global securities market.⁴¹ In this era, there were few transferrable securities on the market as most enterprises were small-scale and closely-related. Hence, actual sophisticated stock exchanges did not come into being until several hundred years later.

In the late 13th century, Bruges commodity traders often gathered in a building named Place de la Bourse in Antwerp, which was owned by the Van der Beurse

⁴⁰ Michie, Randal, *The Global Securities Market: A History*, Oxford University Press, Oxford, 2006, p. 17.

⁴¹ Michie, Randal, *The Global Securities Market: A History*, Oxford University Press, Oxford, 2006, p. 17.

family. Through the influence of this innovative idea, a number of “Bourse” soon opened in Ghent, and Amsterdam very soon after, and “Bourse” became a term interchangeable with that of “stock exchange”. However, investors mainly traded money and bills on Bruges’ Bourse, while there were no specialist intermediaries within Bourse either.⁴² The first stock exchange was established in Antwerp in 1460. Later, more stock exchanges were built in European cities, such as Cologne in 1553, Paris in 1563, in Seville in 1583, and in Frankfurt in 1585.⁴³ Bruges thrived under its financial leadership of Northern Europe until its principal position was eventually replaced by Antwerp. Nevertheless, there were still no adequate liquidating transferrable securities for investors on the emerging market in Antwerp in the sixteenth-century,⁴⁴ and the system in this era was still vulnerable as short-term government debts were the main form of securities. Furthermore, governments were frequently unable to honour their commitments by virtue of compulsorily reducing the interest rate of bonds issued by them. In 1570, Antwerp also reneged on its own borrowings; later, its rival Amsterdam gradually became the new centre of commerce and finance in Europe.⁴⁵

⁴² De Roover, Raymond, *Money, Banking and Credit In Mediaeval Bruges - Italian Merchant Bankers, Lombards and Money Changers - A Study In The Origins Of Banking*, Mediaeval Academy of America, Cambridge, Massachusetts, 1948, p. 11.

⁴³ Michie, Ranald, *The Global Securities Market: A History*, Oxford University Press, Oxford, 2006, p. 23.

⁴⁴ Wee, Herman Van Der, *The Growth of the Antwerp Market and European Economy (Fourteenth-Sixteenth Centuries)*, Bureaux de Recueil, Louvain, 1963, p. 110; Tracy, James D., *A Financial Revolution in the Habsburg Netherlands: Renten and Renteniers in the County of Holland 1515-1565*, University of California Press, Berkeley, 1985, p. 109.

⁴⁵ Ehrenberg, Richard, *Capital and Finance in the Age of the Renaissance*, Augustus M Kelley, New York, 1963, p. 33; Parker, Geoffrey, “The Emergence of Modern Finance in Europe 1500-1730”, in *The Fontana Economic History of Europe, Vol. 2: The Sixteenth and Seventeenth Centuries*, Cipolla, C. M., Harvester Press, New York, 1977, p. 531.

In 1602, exciting possibilities were opening up for securities markets by the establishment of the Dutch East India Company or the Vereenigde Oost-Indische Compagnie (VOC). VOC was granted a 21-year monopoly to carry out colonial and trading activities in the Far East and Asia by the States-General of the Netherlands. Since VOC mainly engaged in long-distance and high-risk trade, it could not be capitalised by small groups of merchants in the traditional manner, as the great costs and high risks could only be shared by many investors. Consequently, VOC became the first joint-stock company which issued a large number of shares to the public. Hence, VOC had the dubious honour of exemplifying the global securities market as it “began to take on its modern form”.⁴⁶

In the 17th century, continuous trade was reputedly introduced by the Amsterdam Stock Exchange (or Amsterdam Bourse) for the first time. Although the securities market was still dominated by the shares of the Dutch East India Company, more sophisticated technologies had been gradually employed by investors. In 1688, Joseph de la Vega noted the techniques of short selling, margin trading, future contracts, option trading, debt-equity swaps, hedging, merchant banking, unit trusts and other speculative instruments that had already been pioneered by the Dutch.⁴⁷ It seems that such trading techniques have not changed substantially since.⁴⁸

⁴⁶ Michie, Randal, *The Global Securities Market: A History*, Oxford University Press, Oxford, 2006, p. 26.

⁴⁷ Vega, Joseph de la, *Confusion de Confusiones, 1688: Portions Descriptive of the Amsterdam Stock Exchange* (selected and translated by Professor Hermann Kellenbenz), Harvard Graduate School of Business Administration, Boston, 1957, p. 134 and p. 147; see also Israel, Jonathan Irvine, *Conflicts of Empires: Spain, the Low Countries and the Struggle for World Supremacy, 1585-1713*, Chapter 14: The Amsterdam Stock Exchange and the English Revolution of 1688, The Hambledon Press, London, 1997, p. 348.

⁴⁸ Sayle, Murray, “Japan Goes Dutch”, *London Review of Books*, Vol. 23, No. 7, 2001, p. 3.

However, the securities market in the Netherlands at this stage could not be considered as a modern organised market as it was little more than experimentation,⁴⁹ while the equity market established in Paris in 1724 was generally termed as the first organised stock market, as a market conduct code had been drawn up and executed to regulate securities dealing, despite its membership being limited to 60 *Agents de change*.⁵⁰

In Great Britain, an Act of Parliament named “Commune Concilium Tentum in Camera Guildhall Civitas London” was enacted in 1673; this concerned the regulation of brokers, but did not mention stock and share transactions.⁵¹ However, it seems that the amount of stock in the market was already enough to require the emergence of specialist dealing intermediaries.⁵² Initially, stock-jobbers gathered in the Royal Exchange, which had frequently been mistaken for the Stock Exchange.⁵³ This episode had been recorded in many documents, and it was noted in one account that “the younger Rothschilds occupy a pillar on the south side of the Exchange, much in the same place as their sire stood before them”.⁵⁴

⁴⁹ Carruthers, Bruce G., *City of Capital: Politics and Markets in the English Financial Revolution*, Princeton University Press, Princeton, 1996, p. 23; Carlos, Ann M.; Key, Jennifer and Dupree, Jill L., “Learning and the Creation of Stock-Market Institutions: Evidence from the Royal African and Hudson’s Bay Companies 1670-1700”, *The Journal of Economic History*, Vol. 58, No. 2, 1998, p. 341.

⁵⁰ Blair QC, Michael and Walker, George, *Financial Markets and Exchanges Law*, Oxford University Press, Oxford, 2007, p. 7.

⁵¹ Morgan, E. Victor and Thomas, William Arthur, *The Stock Exchange: Its History and Functions*, Elek, London, 1969, p. 20.

⁵² Morgan, E. Victor and Thomas, William Arthur, *The Stock Exchange: Its History and Functions*, Elek, London, 1969, p. 20.

⁵³ King, Wilfred Thomas Cousins, *The Stock Exchange*, G. Allen & Unwin, London, 1947, p. 10.

⁵⁴ Evans, David Morier, *The Physiology of London Business, City Men and City Manners*, Groombridge & Sons, London, 1852, p. 99.

Jonathan Miles founded Jonathan's Coffee House in Change Alley in the City of London around 1680. In 1698, stock-dealers moved to Exchange Alley, which was actually a spacious courtyard.⁵⁵ John Castaing had posted the prices of stocks and commodities in Jonathan's Coffee House since that time, and other merchants began to meet there so as to buy and sell shares. John Houghton made a detailed record of this in his weekly journal entitled "Joint-Stocks and the various dealings therein, commonly called Stock-Jobbing". According to Houghton's record, the trade was chiefly conducted at Jonathans' Coffee House, and sometimes at Garraways or some other Coffee Houses.⁵⁶ Houghton noted "Monied Man goes among the Brokers" and then "upon information bids the Broker buy or sell so many Shares of such and such Stocks if he can at such and such Prices".⁵⁷ At the very beginning, transactions were generally carried out by means of private negotiation between seller and buyer. By a later time, auctions were regularly held at Garraways, since it could meet the requirements of both owner and purchaser simultaneously, owing to the significant growth of these types of securities as well as in the number of investors.⁵⁸ Nevertheless, the auction procedure also had a drawback, as the potential buyer could not have their own requirement heard.⁵⁹

⁵⁵ King, Wilfred Thomas Cousins, *The Stock Exchange*, G. Allen & Unwin, London, 1947, p. 10.

⁵⁶ Houghton, John, *A Collection of Letters for the Improvement of Husbandry and Trade*, Nos. 97 to 103, June 8th to July 20th, 1694; Michie, Ranald, *The London Stock Exchange: A History*, Oxford University Press, Oxford, 1999, p. 20.

⁵⁷ Houghton, John, *A Collection of Letters for the Improvement of Husbandry and Trade*, Nos. 97 to 103, June 8th to July 20th, 1694.

⁵⁸ Michie, Ranald, *The London Stock Exchange: A History*, Oxford University Press, Oxford, 1999, p. 15 and p. 20.

⁵⁹ Dickson, P.G.M., *The Financial Revolution in England: A Study in the Development of Public Credit 1688-1756*, Macmillan, London, 1967, pp. 490-494, p. 499 and pp. 507-511; Neal, Larry, *The Rise of Financial Capitalism: International Capital Markets in the Age of Reason*, Cambridge University Press, Cambridge, 1993, p. 33; Carter, Alice Clare, *Getting, Spending and Investing in Early Modern Times: Essays on Dutch, English and Huguenot*

In reality, the U.K. government had widely employed the short-term redeemable borrowings so as to raise needed funds in the sixteenth and seventeenth centuries. A permanent transferable debt was finally created by William III in 1693, but it was not welcomed warmly among investors. Several defaults on the former government's bonds accounted in no small measure for the new no-win long-term loan. Nevertheless, this unsuccessful loan indirectly constituted the real foundation of the British securities market. Scotsman William Paterson founded the Bank of England at the suggestion of William III in 1694 with the sum of £1.2 million, so as to lend the full capital to the British government.⁶⁰ Many investors had been attracted by the terms of the loan since it had an 8 per cent interest rate per annum. Moreover, the banking privileges monopolised by the Bank of England, such as the issuance of notes, also restored subscribers' confidences. Since the quantity of investors had increased dramatically, turnover in the London securities markets rose consequentially. Hence, the formation of the Bank of England actually provided the foundations for the London Stock Exchange, as the government's permanent debt investors had an urgent need to make its investments marketable.⁶¹

Economic History, Van Gorcum, Assen, 1974, p. 73, p. 91, p. 125, p. 127, p. 134 and p. 136; Cope, S. R., "The Stock Exchange Revisited: A New Look at the Market in Securities in London in the Eighteenth Century", *Economica*, Vol. 45, Issue 177, 1978, pp. 2-3.

⁶⁰ Cunliffe Committee and Macmillan Committee, *British Parliamentary Reports on International Finance: The Cunliffe Committee and the Macmillan Committee Reports*, Arno Press, New York, 1978, p. 25.

⁶¹ Dickson, P.G.M., *The Financial Revolution in England: A Study in the Development of Public Credit 1688-1756*, Macmillan, London, 1967, pp. 466-467 and pp. 529-530; Mirowski, Philip, "The Rise (and Retreat) of a Market: English Joint Stock Shares in the Eighteenth Century", *The Journal of Economic History*, Vol. 41, No. 3, 1981, pp. 560-562; Clapham, John, *The Bank of England, 1694-1914, Vol. I*, Cambridge University Press, Cambridge, 1944, pp. 19-20; Carter, Alice Clare, *Getting, Spending and Investing in Early Modern Times: Essays on Dutch, English and Huguenot Economic History*, Van Gorcum, Assen, 1974, p. 127; Bowen, H. V., "Investment and Empire in the Later Eighteenth Century: East India Stockholding, 1756-1791", *The Economic History Review*, New Series, Vol. 42, No. 2, 1989, pp. 188; Bowen, H. V., "The Bank of England During the Long Eighteenth Century, 1694-1820",

Nevertheless, the London securities market was still relatively small in the early eighteenth century. There were only some 50 active traders on the market, and the Dutch bond was the only available international equity.⁶² Several years later, Jonathan's Coffee House was destroyed by fire in 1748, and then rebuilt. An organised club to trade stocks, consisting of 150 brokers and jobbers, was created in 1760. In 1773, the Coffee House was finally renamed as the Stock Exchange.⁶³

The development of European securities markets from the sixteenth century to the early seventeenth century was remarkable due to the positive role played by governments. However, it seems that most European governments were not poised for the rapid growth of the securities markets, and the consequential burgeoning of the money supply. By degrees, the unformed monetary policies were strangling the Western European economy adversely, leading to a speculative boom in the 1720s which centred on Paris and London. Most chief financial centres in Western Europe, including Amsterdam, Geneva, Vienna, Lisbon and Hamburg were all engulfed by this speculation. The consequence of this speculative boom was disastrous as it affected investor confidence in regard to governments' debt, with confidence that had taken many years to build up being destroyed overnight. Fortunately, the British

in *The Bank of England: Money, Power and Influence 1694-1994*, Richard, Roberts and Kynaston, David edited, Oxford University Press, Oxford, 1995, p. 9.

⁶² Banner, Stuart, *Anglo-American Securities Regulation: Cultural and Political Roots 1690-1860*, Cambridge University Press, Cambridge, 1998, p. 22 and p. 28; Scott, William Robert, *The Constitution and Finance Of English, Scottish And Irish Joint-Stock Companies to 1720, Vol. I*, Cambridge University Press, Cambridge, 1912, p. 155 and p. 161.

⁶³ Blair QC, Michael and Walker, George, *Financial Markets and Exchanges Law*, Oxford University Press, Oxford, 2007, p. 7.

government did not renege on its obligations to the South Sea Company, whose securities were one of the main stocks on the European market. Hence, the London securities market narrowly avoided collapse amid the wave of speculation, and the Bank of England remained in operation.⁶⁴

On the whole, the early development of European securities markets was due in large part to the strong desire of governments to raise funds which would finance their military campaigns and colonial rule. Short-term borrowings were gradually replaced by long-term government debts and corresponding interest payments, since governments could provide steady income for relatively long periods of time. Such transferable long-term debt was also comparatively attractive to most investors when compared with traditional loans to individuals, as merchants could employ their own idle funds more safely, and with a moderate rate of return on their capital. Nevertheless, the fickleness of governments had been corroborated by their continued reneging on debts; hence, there was widespread lack of confidence in government debts among investors over a fairly long time frame. This condition had depressed the whole European securities market and a sophisticated securities market could not be created thereon as there were insufficient liquid securities. Later, the foundation of the Bank of England actually privatised government debt,⁶⁵ and investors' confidence was restored dramatically. Thus, the establishment of an

⁶⁴ Baskin, Jonathan Barron and Miranti, Paul J., *A History of Corporate Finance*, Cambridge University Press, Cambridge, 1997, p. 123; Stasavage, David, *Public Debt and the Birth of the Democratic State: France and Great Britain 1688-1789*, Cambridge University Press, Cambridge, 2003, p. 83 and p. 91.

⁶⁵ Michie, Ranald, *The Global Securities Market: A History*, Oxford University Press, Oxford, 2006, p. 36.

organised securities market could cater for the needs of investors that wanted to buy and sell securities in a risk free environment with low trading costs.

Turning to North America, which is another major example of an outsider system. The United States federal government was heavily in debt when the Revolutionary War ended in the 1780s. Hence, the federal government issued bonds valued at some US\$ 80 million in 1790 so as to reduce the debt burden. These bonds formed the origins of the United States investment markets. Initially, brokers traded generally in the market. On May 17, 1792, twenty-four New England businessmen signed a contract in New York, known as the Buttonwood Agreement, outside 68 Wall Street in Lower Manhattan. Regulations, fee ceilings and general rules concerning the operation of the stock market had been designated by this agreement. They then met at 22 Wall Street at noon each day, with the highest bidder able to buy the stocks and bonds. Later, they moved to the Tontine Coffee House to trade, with the New York Stock Exchange and Board finally created in 1817. Then, in 1863, its name was shortened to the New York Stock Exchange and its location finalised on the corner of Wall Street and Broad Street.⁶⁶

Around 250 stock exchanges had existed in the United States over the nineteenth century, but only a few of these had survived.⁶⁷ The New York Stock Exchange

⁶⁶ See New York Stock Exchange history, available at: <http://www.nyse.com/about/history/1089312755484.html>, accessed January 10, 2011.

⁶⁷ Michie, Randal, *The London and New York Stock Exchanges 1850-1914*, Allen & Unwin, London, 1987, p. 167; Sears, Marian V., "Gold and the Local Stock Exchanges of the 1860s", *Explorations in Economic History*, Vol. 6, 1969, p. 198.

(NYSE) was generally termed as the most successful exchange in the U.S., as it had a “mighty influence over the price of the vast volume of securities dealt within its walls.”⁶⁸ Moreover, it had contributed significantly to the U.S. economy by issuing bonds and stocks, channelling necessary funds to many capital-intensive projects ranging from railroads to infrastructure construction.⁶⁹ Significantly, it seems that the functional role of the New York Stock Exchange as an important signalling instrument for the market had been overlooked by some scholars. Since laissez-faire policy was dominant in United States at that time, and a central bank did not exist, an institution like the New York Stock Exchange was inevitable in order to achieve equilibrium in the economy.⁷⁰

In 1971, the NASDAQ (National Association of Securities Dealers Automated Quotations) was created as a bulletin board which provided information of listings and prices for buyers and sellers. In 1987, an efficient electronic system was adopted in the NASDAQ, so as to balance the *October crash*; this measure actually transformed the NASDAQ into a competitive electronic stock exchange as the telephone trades had been eliminated. In reality, most traders had dealt via the telephone prior to that point, and the NASDAQ was also still termed as an Over-The-Counter trading system by Standard & Poor's Corporation until 1987.⁷¹

The NASDAQ almost collapsed when the *dot-com bubble* burst at the close of last

⁶⁸ Cornwallis, Kinahan, *The Gold Room and The New York Stock Exchange and Clearing House*, Kessinger Publishing, Whitefish, 1879, p. 37; Clews, H., “Some Notes on the American Position”, *Financial Review of Reviews*, May 1908.

⁶⁹ Michie, Ranald, *The London and New York Stock Exchanges 1850-1914*, Allen & Unwin, London, 1987, p. 239.

⁷⁰ Michie, Ranald, *The London and New York Stock Exchanges 1850-1914*, Allen & Unwin, London, 1987, p. 242.

⁷¹ See *Standard & Poor's Corporation, Stock Guide*, Year End 1987 Issue.

century, but fortunately it survived that crisis. The NASDAQ recovered gradually as several giant high-technology corporations, such as Microsoft and Google, still listed their securities on the Exchange and it now even has the ability to compete with the NYSE.

The history of the global securities market allows us to infer that the trust and confidence of investors, and the stability of the financial system, are essential ingredients for the prosperity of the stock market. It would be very difficult to achieve or maintain equilibrium in the economy simply by relying on administrative direction from government; the global securities market is also important in maintaining this equilibrium. Thanks to the flexibility endowed by its very nature, the securities market plays a vital role in capital mobilisation and funds channelling. Moreover, the function of the stock market should be complementary to that of the banking system since they are both integral components of a well-balanced financial system.⁷²

China's stock markets can only be regarded as emergent when compared with these highly developed western counterparts, but the former have been developing at a rapid rate, and contributing considerably to Mainland China's economic growth. Therefore, the history of China's stock markets will be reviewed next.

⁷² Michie, Ranald, *The Global Securities Market: A History*, Oxford University Press, Oxford, 2006, p. 335.

a) Early History of China's Stock Markets

By the nineteenth century, several well-regarded trading centres had emerged along the south coast of Mainland China due to the earlier commercial revolution. Initially, the trade between China and the West was limited in terms of both trading scale and scope. Especially, foreign merchants were confined to conducting business in Canton with the consent of the Ch'ing government.⁷³ European traders such as the East India Company and American merchants obtained a large volume of tea and silk from Canton and exported large amounts of opium to China as a substitute for silver.⁷⁴

In August 1842, the Treaty of Nanking was signed when the Ch'ing government suffered a shock defeat in the Opium Wars, and four more ports were opened for foreign merchants, including Amoy, Foochow, Ningpo and Shanghai.⁷⁵ After the conclusion of the Treaty of Nanking, the Sino-foreign trade expanded rapidly and the volume of imports had tripled by the end of the nineteenth century.⁷⁶ Gradually, Shanghai became the major centre of foreign trade among all Treaty ports in the latter half of the nineteenth century due to its geographical advantages, it was even once noted that foreigners could derive incalculable advantages from this place due

⁷³ Thomas, William Arthur, *Western Capitalism in China: A History of the Shanghai Stock Exchange*, Ashgate, Farnham, 2001, p. 3.

⁷⁴ Hao, Yen-p'ing, *The Commercial Revolution in Nineteenth-Century China: The Rise of Sino-Western Mercantile Capitalism*, University of California Press, Berkeley, 1986, p. 32.

⁷⁵ Wakeman, Frederic E., Jr., *The Fall of Imperial China*, The Free Press, New York, 1975, p. 136; Johnson, Linda Cooke, *Shanghai: From Market Town to Treaty Port 1074-1858*, Stanford University Press, Palo Alto, 1995, p. 178.

⁷⁶ Feuerwerker, Albert, "Economic Trends in the Late Ch'ing Empire, 1870-1911", in *The Cambridge History of China*, Vol. 11, Part 2, Fairbank, Jonh K. and Liu, Kwang-Ching edited, Cambridge University Press, Cambridge, 1980, p. 48.

to the liberty of trade.⁷⁷ With the turnover of Maritime Customs revenue, the institution established by foreign consuls to collect maritime trade taxes in Shanghai in 1854 had increased by 500 per cent by 1900.⁷⁸

In reality, many joint stock companies had already been established in Shanghai by the 1860s and their shares were also being traded publicly. The North China Herald, one of the most influential foreign newspapers in the nineteenth and early twentieth century, had a column for the collection of local share list.⁷⁹ Share trading was accomplished in Shanghai's International Settlement in most instances, since the financial and legal frameworks were well developed there. Then, the first share list appeared in 1866.⁸⁰

Soon, more and more investors were eager to speculate on the shares of local enterprises and took greater risks accordingly, as the commercial activity in the Yangtze basin was prospering after the defeat of the Taiping Rebellion in the 1870s. It has been said that there was a boon in mining shares in the early 1890s, and that the Shanghai Sharebrokers' Association was founded by foreign investors so as to meet the demand for organised securities trading. However, members had to pay five US dollars per annum as a subscription, plus an entrance fee of twenty-five US

⁷⁷ Murphey, Rhoads, *Shanghai: Key to Modern China*, Harvard University Press, Cambridge, Massachusetts, 1953, p. 59.

⁷⁸ Murphey, Rhoads, *Shanghai: Key to Modern China*, Harvard University Press, Cambridge, Massachusetts, 1953, p. 117.

⁷⁹ Xu, Xiaoqun, *Chinese Professionals and the Republican State: The Rise of Professional Associations in Shanghai 1912–1937*, Cambridge University Press, Cambridge, 2001, p. 45.

⁸⁰ Thomas, William Arthur, *Western Capitalism in China: A History of the Shanghai Stock Exchange*, Ashgate, Farnham, 2001, p. 35.

dollars.⁸¹

China signed the Treaty of Shimonoseki with Japan in 1895, and the number of listed companies was gradually expanded as more foreign enterprises were formed in the Treaty Ports due to the privileges endowed by this Treaty. The introduction of the manufacturing industry greatly contributed to the prosperity of local share markets, and more people rushed into the International Settlement and French Concession to seek their fortunes. The Association filed an application for registration in Hong Kong in accordance with the Hong Kong Companies Ordinance, and its official title was finally changed in 1904 to the “Shanghai Stock Exchange”.⁸²

Revolution and the flames of war almost overwhelmed the entirety of China from the early twentieth century, until this disruption ceased in October 1949 with the founding of the People's Republic of China. Consequentially, the stock markets experienced challenging times during this turbulent pre-1949 era. Following proposals by Sun Yat-sen and his associates, the now dissolved Peking Stock Exchange was established in 1917 with a capital of 1,000,000 US dollars, while the notes of the Bank of China and the Bank of Communications were the major securities traded on this exchange.⁸³ Several years later, the China Merchants' Stock & Commodity Exchange and the Shanghai Chartered Stock & Produce Exchange

⁸¹ *British Chamber of Commerce Journal* (Shanghai), Vol. IV, 1919, p. 120.

⁸² Fan, Wenzhong, “Construction Methods for the Shanghai Stock Exchange Indexes: 1870-1940”, in *The Shanghai Stock Exchange History Research Project of Yale SOM* (International Center for Finance), p. 1, available at: <http://icf.som.yale.edu/sse/index.shtml>, accessed August 5, 2009.

⁸³ The Chinese Economic Journal, “Exchanges in Shanghai”, *The Chinese Economic Journal*, Vol. XII, No. 1, 1933, p. 44.

came into operation in succession with the consent of the Republican Government's Ministry of Commerce.⁸⁴ Generally, securities traded in these markets in this era should be termed as speculative rather than real investment. Legal provisions were ambiguous and most disputes were decided at the discretion of the Ministry of Commerce.⁸⁵

In December 1940, the Shanghai Chinese Stock Exchange was established at 270 Peking Road, so as to "promote the flow of capital into large scale Chinese enterprises".⁸⁶ After a brief success, the Exchange was riddled with speculation and once again was affected by the strains of war and inflation. In May 1949, all equity trading activities were terminated as the Communist regime and the People's Liberation Army took control of Shanghai. The previous legal system and its laws were abrogated by the new PRC government, and the widespread nationalisation of registered companies began.⁸⁷

b) Recent History of China's Stock Market from the 1980s to 2011

Having been taken over by the Communist regime in 1949, the Shanghai Securities Exchange was closed down for over 40 years, until December 1990. During this period, the class struggle dominated the country. The economy did not improve

⁸⁴ See *The North China Herald*, July 1920; *China Industrial Handbooks*, Ministry of Industries, Shanghai, 1935, p. 951.

⁸⁵ Kirby, William C., "China, Unincorporated: Company Law and Business Enterprise in Twentieth Century China", *Journal of Asian Studies*, Vol. 54, No. 1, 1995, p. 47.

⁸⁶ Central Bank of China Bulletin, "The Chinese Stock Market in Shanghai", *Central Bank of China Bulletin*, Spring 1941, p. 2.

⁸⁷ Kirby, William C., "China, Unincorporated: Company Law and Business Enterprise in Twentieth Century China", *Journal of Asian Studies*, Vol. 54, No. 1, 1995, p. 53.

substantially until Deng Xiaoping was in the position of authority and a plan for modernisation was put in place.⁸⁸ When the economy went into large-scale modernisation, an enormous quantity of capital was urgently needed for the transformation of State-Owned Enterprises (SOE). During the early and mid-1980s, every year the central PRC government still had to pay huge subsidies to loss-making SOEs, and this gradually became a heavy burden on government revenues.⁸⁹ Consequently, private corporate structures were adopted by many SOEs by the end of the 1980s, and staff members could even purchase a small fraction of the SOEs capital. Nevertheless, the state still took *de facto* control of the vast majority of SOEs, since all such stocks and shares were non-circulating.⁹⁰

The first public share issuance occurred in 1985 in Shanghai, originating from a subsidiary of Yanzhong Photocopy Co.⁹¹ However, there was tension between the central government and local authorities in Shanghai and Shenzhen on the issue of opening stock markets, since Beijing officials had major concerns about the consequential speculation and feared the loss of their own control over enterprises. The first experimental market opened in Shenyang around one year later under the management of the Shenyang Trust and Investment Corporation, but bonds were the

⁸⁸ See Fairbank, John King, *China: A New History*, Harvard University Press, Cambridge, Massachusetts, 1992, Chapter 19, 20.

⁸⁹ Goodhart, Charles and Xu, Cheng-Gang, "The Rise of China as an Economic Power", *National Institute Economic Review*, Vol. 155, No. 1, 1996, p. 69.

⁹⁰ Salem, Ellen, "Peking Ducks the Issue: China Turns Against Shareholding System In State Sector", *Far Eastern Economic Review*, Vol. 143, 1989, p. 72.

⁹¹ See *Sunday Morning Post*, February 9, 1992; also Euromoney, "Suddenly the Stock Market is OK: the Future of Securities Trading in the People's Republic of China", *Euromoney*, June 1986, available at: <http://www.euromoney.com/Article/1451605/Suddenly-the-stock-market-is-ok-the-future-of-securities.html>, accessed September 24, 2011.

major form of equity issued.⁹² A branch of the People's Bank of China tactfully approved the share offering of Yanzhong Industrial Corporation and Feile Acoustics Corporation in September 1986, and such trading was undertaken by the Jingan district branch of the Shanghai Trust and Investment Trust Company.⁹³ This development was given a rapturous welcome by investors.

Inspired by the success of the Jingan district branch, fifteen more broking houses were put into operation in Shanghai by the end of 1989, while the number of listed corporations was also increasing. However, the situation in Shanghai was quite similar to that of Shenyang, as the trading of treasury bonds and short-term enterprise bonds dominated the market due to the high rates of interest.⁹⁴ The plan to list more corporations was halted by the cataclysm of Tiananmen Square in Beijing, 1989, but the repercussions of this political disruption were limited since there was an urgent need for market reform. As time passed, Shanghai and Shenzhen evolved into major centres of shares and stock trading, and did so with official support. To a certain degree, Shanghai had the advantage over Shenzhen as the city had a long history of share dealing prior to 1949. In light of these developments, in the mid-1990s the People's Bank of China imposed a limit on share price rises and falls following a policy of containment; this was because speculation had intensified

⁹² Beijing Review, "Stock Market Debut in China", *Beijing Review*, No. 33, 1986, p. 6.

⁹³ See *Wall Street Journal*, November 10, 1986; Beijing Review, "Shanghai Tries Stocks and Shares", *Beijing Review*, No. 42, 1986, p. 7.

⁹⁴ *Far Eastern Economic Review*, March 10, 1989, p. 58; *Far Eastern Economic Review*, "Borrowing Boom", *Far Eastern Economic Review*, September 14, 1989, p. 63.

dramatically after more corporations had listed on the Shenzhen market.⁹⁵ The conditions in the Shanghai market were slightly different from those of Shenzhen, as listed corporations paid a reasonable dividend to shareholders every year, which was even higher than the bank deposit rates. Nevertheless, most of the capital of the listed corporations was still controlled by state institutions and the market could not on the whole have been termed as active.⁹⁶

In December 1990, the Shanghai Securities Exchange was formally put into operation and all existing over-the-counter and curb markets were outlawed. Following soon after, the Shenzhen market was also fully operational around six months later. Next, the new computer systems of the Securities Trading Automated Quotation System (STAQS) and the National Electronic Trading System (NETS) came on stream so as to facilitate the day-to-day running of the new securities exchanges.⁹⁷ More and more listed corporations, especially giant state-owned enterprises, appeared on the market as time went by. With the support of the central authorities, Shanghai gradually established its status as China's financial centre, and though the growth of the Shenzhen stock market was also fairly rapid, it was eclipsed by its counterpart in Shanghai to a considerable degree.

The shares issued in China's stock markets were generally divided into two major categories: A shares and B shares. A shares were intended mainly for the domestic

⁹⁵ Far Eastern Economic Review, "Counters Revolution", *Far Eastern Economic Review*, July 26, 1990, p. 54.

⁹⁶ See *Far Eastern Economic Review*, March 21, 1991.

⁹⁷ *Far Eastern Economic Review*, April 24, 1991, p. 39.

market, whilst B shares were created in December 1991 for foreign investors and aimed at encouraging overseas securities firms and financial institutions to invest in China's markets. Moreover, B shares were traded in foreign currencies rather than RMB: in the US dollar in Shanghai and in the Hong Kong dollar in Shenzhen.⁹⁸ Apart from A and B shares, two other classes of shares were created as part of the corporatisation of SOEs; they were non-tradable legal person shares (LPs) and state shares (or state-owned shares). State shares and LPs each made up about one-third of the listed SOE's whole equity. State shares were under the management of affiliates of the Ministry of Finance, and LPs were allocated to institutions such as SOEs and government bureaus before their Initial Public Offerings (IPO).⁹⁹

These listing activities soon spread widely and Tsingtao Brewery became the first of the nine Chinese SOEs to list on the Hong Kong Stock Exchange in July 1993, when it issued 317.6 million H shares at the price of HK\$ 2.80 per share and raised HK\$ 900 million.¹⁰⁰ Moreover, several other Chinese SOEs took the approach of "backdoor listing" in Hong Kong since they could not meet the requirements for direct listing for a variety of reasons; these SOEs were generally known as "Red Chips". The backdoor listing was achieved by several means, including setting up a Listing Vehicle and then asset swapping, and acquiring or merging with an existing

⁹⁸ Fung, Hung Gay; Lee, Wai and Leung, Wai Kin, "Segmentation of the A and B-share Chinese Equity Market", *The Journal of Financial Research*, Vol. 23, No. 2, 2000, p. 179.

⁹⁹ OECD (Organization for Economic Co-operation and Development), *China in the World Economy: An OECD Economic and Statistical Survey*, Kogan Page, London, 2003, p. 510; also Delios, Andrew and Wu, Zhi Jian, "Legal Person Ownership, Diversification Strategy and Firm Profitability in China", *Journal of Management & Governance*, Vol. 9, No. 2, 2005, p. 151; China Daily, "Four Listed Firms Pioneer State Share Reform", *China Daily*, May 9, 2005, available at: http://www.chinadaily.com.cn/english/doc/2005-05/09/content_440286.htm, accessed September 25, 2011.

¹⁰⁰ See *South China Morning Post*, June 15, 1993.

listed corporation.¹⁰¹ One year later, the Shandong Huaneng Power Development and Huaneng Power International listed on the New York Stock Exchange through the issue of American Depositary Receipts and became the first listed Chinese SOE to have what are now labelled as N shares.¹⁰²

The quota system once dominated the share issuance process in the primary securities market on the Mainland. Upon the approval of the State Planning Commission (the predecessor of the National Development and Reform Commission) and the China Securities Regulatory Commission (CSRC), it was possible for almost every province to be allocated some quota each year. Since the central authorities were not free from the influence of instrumentalism, the quota system had been employed as a major policy means to maintain the balance between the different industrial sectors and regions. In most cases, only preferred SOEs could obtain the essential quota for making issues, while the number of issues had already been fixed in advance. Furthermore, the government's main concern with price manipulation and the rapidity of development could be alleviated by such measures. With the enactment of the first Securities Law in 1999,¹⁰³ these curbs on primary issuance were gradually relaxed.¹⁰⁴ On the other hand, B shares were immune to the quota system, but the adequacy of foreign exchange income of such companies was a

¹⁰¹ *The Red Chips Directory*, Wardley James Capel, Hong Kong, 1993, p. 3.

¹⁰² International Finance Corporation, *Emerging Stock Markets Factbook 1996*, World Bank Publications, Washington, 1996, p. 139.

¹⁰³ People's Republic of China, *Securities Law of the People's Republic of China* (1998 Order No.12 of the President of the People's Republic of China), adopted at the 6th Meeting of the Standing Committee of the 9th National People's Congress of the People's Republic of China on December 29, 1998, and effective as of July 1, 1999, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=1084>, accessed September 21, 2012.

¹⁰⁴ OECD (Organization for Economic Co-operation and Development), *China in the World Economy: An OECD Economic and Statistical Survey*, Kogan Page, London, 2003, p. 514.

crucial factor for IPO approval as foreign exchange would be used to pay dividends. The quota did not apply to H shares either, but obtaining the seal of IPO approval was not a simple matter since the application would be considered in all its features. Generally, only large and major SOEs had the potential to list H shares within a reasonable time frame.¹⁰⁵

In the early stages of the stock market's development, there was strong demand for subscribing to new shares when an IPO was launched in the Mainland; this demand was difficult to satisfy since the number of shares allocated to individuals was fairly limited. There was the real likelihood that the share price would double in value or even more on the first day of trading, and this condition was the driver of the unprecedented boom of stock markets. Moreover, the comparatively low Chinese personal savings rate was another objective condition that contributed to the great enthusiasm for securities investment.¹⁰⁶ Later the approach of choosing subscribers by lottery was introduced in the IPO of Yanzhong in August 1992, and approximately 10 per cent of those subscribers who had obtained scarce application forms were expected to be entitled to subscribe for shares in the IPO. Unfortunately, this experimental practice soon resulted in chaos as there were circulating rumours that some application forms had been sold or stolen by government officials and bank staff. The Shenzhen stock market was closed temporarily as a direct

¹⁰⁵ Spencer, Michael, "Securities Market in China", *Finance and Development*, Vol. 32, Issue 2, 1995, p. 29.

¹⁰⁶ *Far Eastern Economic Review*, April 16, 1992, p. 66.

consequence of such rumours.¹⁰⁷

Once the deficiencies of imposing limits on the supply of IPO application forms were fully realised, the application forms were made available in sufficient quantity in the issuance of the Tsingtao Brewery shares in July 1993. After several modified methods were further trialled by the relevant authorities, a compromise mechanism was finally accepted by most investors.¹⁰⁸ Firstly, the subscribers for new IPO shares had to place a sufficient deposit into a designated bank account as a necessary step for application, then the shares would be allotted by the approach of a lottery on a *pro rata* basis.¹⁰⁹ Fortunate investors would be selected to subscribe to new shares, whereas deposits were repaid to unsuccessful applicants within a certain period. Over time, the turnaround in deposit repayment was shortened considerably.¹¹⁰ However, the strict quota on the subscription of new shares was not introduced for the issuance of B shares, as only foreign investors were qualified to purchase these.

Mainland China was a late entrant into the establishment of securities markets; therefore, its early regulations and legislation were far from satisfactory. From the mid-1980s to the early 1990s, the local branch of the People's Bank of China took a

¹⁰⁷ The Economist, "China's Stockmarkets: Open Outcry", *The Economist*, Vol. 324, Issue 7772, 1992, p. 24; *Far Eastern Economic Review*, August 27, 1992, p. 53.

¹⁰⁸ Poole, Teresa, "Chinese Are Quick On the Draw: Peking Is Making A Lottery of Its First Share Sale, But the Punters Love It", *The Independent*, March 29, 1994, available at: <http://www.independent.co.uk/news/business/chinese-are-quick-on-the-draw-pekings-making-a-lottery-of-its-first-share-sale-but-the-punters-love-it-teresa-poole-reports-1432424.html>, accessed September 27, 2011.

¹⁰⁹ Su, Dongwei, *Chinese Stock Markets: A Research Handbook*, World Scientific Publishing Company, Singapore, 2003, p. 249.

¹¹⁰ Zhang, Yilei and Thomas, William Arthur, "Operational Mechanisms and Characteristics of China's Primary and Secondary Markets", *Journal of Asian Business*, Vol. 15, No. 1, 1999, p. 49.

major role in approving new listings, and the local municipal government also tended to exercise undue influence upon market regulation.¹¹¹ Since local protectionism generally had an adverse effect on the development of stock markets, local authorities were forced to gradually devolve most of their regulatory powers to the central government. In October 1992, the State Council Securities Commission (SCSC) was created as an affiliated policy-making institution for drafting the laws and regulations related to the equity market; the first chairman of SCSC was Zhu Rongji, the Vice-Premier.¹¹² Following the formation of the SCSC, the China Securities Regulatory Commission (CSRC) came into existence shortly afterwards. Originally, the CSRC was authorised to supervise the securities and futures markets as an executive branch of the SCSC. Despite these awkward arrangements, the CSRC gradually obtained a greater say in the regulation of securities markets in the ensuing years. Pursuant to the State Council Reform Plan, the SCSC and the CSRC were finally merged into one ministerial level agency under the umbrella of the State Council in April 1998.¹¹³ With the CSRC's investigative and disciplinary powers enhanced considerably, the centralisation of regulatory powers actually facilitated the structured regulation of equity markets.¹¹⁴

The regulation of A shares has matured considerably over the last two decades, and

¹¹¹ Spencer, Michael, "Securities Market in China", *Finance and Development*, Vol. 32, Issue 2, 1995, p. 31.

¹¹² Green, Stephen, *The Development of China's Stockmarket, 1984-2002: Equity Politics and Market Institutions*, Routledge Curzon, London, 2004, p. 159.

¹¹³ Green, Stephen, *The Development of China's Stockmarket, 1984-2002: Equity Politics and Market Institutions*, Routledge Curzon, London, 2004, p. 152.

¹¹⁴ Ayling, D. E. and Jiang, Z., "Chinese and Western Stock Markets: International Influences and Development", in *Perspectives On Accounting and Finance In China*, Blake, John and Gao, Simon edited, Routledge, London, 1995, p. 76.

the A shares markets in Shanghai and Shenzhen flourished despite a fairly high rate of volatility. In contrast to A shares, the B shares market had a relatively small capitalisation (see Tables 2.1, 2.2 and 2.4),¹¹⁵ and non-resident investors soon became disillusioned with B shares, as their performance had not improved acceptably over a long period. In such a climate, persistent heavy discounting had been employed in the sales of B shares to make them more attractive. In the early 1990s, some Mainland corporations even offered their B shares at a surprising discount of 60 per cent, although a 20 per cent discount was more commonplace throughout the markets.¹¹⁶ After 1994, some domestic investors stealthily opened accounts for B shares under the acquiescence of the Mainland government, as the authority intended to give fresh impetus to the market. By 1997, more than half of the annual turnover of B shares was attributed to domestic investors,¹¹⁷ but the Mainland authority was still reluctant to define its position towards the widely documented problems of B shares. On the other hand, the latent political risks and opaque listing requirements added complications to the indefinite prospects of B shares, which also made it more difficult to inflame the investment interests of foreign investors. Some years later, limitations on capital accounts were finally relieved. Resident investors were entitled to open trading accounts for B shares from February 19, 2001, but a deposit of US\$ 1,000 had to be paid as a minimum

¹¹⁵ Thomas, William Arthur, *Western Capitalism in China: A History of the Shanghai Stock Exchange*, Ashgate, Farnham, 2001, p. 299.

¹¹⁶ Bailey, Warren, "Risk and Return On China's New Stock Markets: Some Preliminary Evidence", *Pacific-Basin Finance Journal*, Vol. 2, Issue 2, 1994, p. 254.

¹¹⁷ *China Research*, CLSA, Hong Kong, February 1997, p. 18.

requirement.¹¹⁸ China's Premier, Zhu Rongji, defined this move as an integral part of the ongoing reform of the stock markets.¹¹⁹ As the savings of foreign currency in the personal sector had accumulated around US\$ 80 billion, there was an incentive for resident investors to invest in B shares.¹²⁰ The trading volume of B shares soon soared after the opening of the B share market. Nevertheless, the boom only lasted for several months and the index of B shares then slid to a 52-week low in July 2001.¹²¹ Some analysts blamed the central government for this collapse in prices, since there had been no consistent action to build investor confidence.¹²²

As Table 2.1 and Table 2.2 below show, there were only 6 companies listed on the Shenzhen Stock Exchange (SZSE) in 1991. Then, the number of companies listing began to accelerate, and there was a steep rise in the number of companies listed on the SZSE after 1995, especially as over 100 companies were listed annually in 1996 and 1997. From 1998 to 2000, the number of companies listing increased steadily. However, this number decreased from 514 to 508 in 2001; then it remained almost unchanged until 2003. After 2003, the quantity of companies listed on the SZSE was again on the increase. Dozens of companies were listed on the SZSE on average

¹¹⁸ Li, Yuan, *China's B-share Discount Puzzle: New Event, New Hypothesis and New Findings*, January 25, 2004, p. 7, available at SSRN: <http://ssrn.com/abstract=985225>, accessed August 30, 2009.

¹¹⁹ See the speech by China's Premier Zhu, Rongji in the Fourth Session of the PRC Ninth People's Congress, March 21, 2001.

¹²⁰ See the speech by China's Premier Zhu, Rongji in the Fourth Session of the PRC Ninth People's Congress, March 21, 2001.

¹²¹ See Smith, Craig S., "Chinese B Shares Plunge As Quickly as They Soared", *The New York Times*, August 7, 2001, available at: <http://www.nytimes.com/2001/08/07/business/chinese-b-shares-plunge-as-quickly-as-they-soared.html>, accessed September 24, 2011.

¹²² See Smith, Craig S., "Chinese B Shares Plunge As Quickly as They Soared", *The New York Times*, August 7, 2001, available at: <http://www.nytimes.com/2001/08/07/business/chinese-b-shares-plunge-as-quickly-as-they-soared.html>, accessed September 24, 2011.

between 2003 and 2009, and the total number of listed companies on the exchange reached 830 in 2009. In 2010 and 2011, 339 and 242 companies were listed on SZSE, respectively. The surge of companies listing in these two years owed a great deal to the initial prosperity of the ChiNext board, which was a new market tier of the SZSE inaugurated in late 2009 for high-growth start-ups. On the whole, the SZSE has experienced rapid and steady growth since the 1990s in terms of the number of listed companies, despite China's government deciding to execute a plan to reduce certain state shares listed on the stock markets from 2000 to 2003, the principal aim of which was to raise funds for China's social security.¹²³ Moreover, the Small and Medium Enterprises Board (SME Board) and the ChiNext board of the SZSE have given a fair account of themselves since they were launched.

Issued capital refers to the value of the shares issued to shareholders, which also means the nominal value of the shares. By comparison, market capitalisation is calculated by multiplying the number of shares outstanding by the current market price of one share.¹²⁴ The issued capital and market capitalisation of A shares and B shares listed on the SZSE are illustrated in Tables 2.1 and 2.2 below. As B shares were not introduced into the SZSE by China's government until after 1992, the total issued capital of A shares was only RMB 357 million in 1991, and the total market capitalisation was RMB 7,976 million in the same year. Moreover, only about 68 per

¹²³ See Wang, Zhipeng, "Reducing State Shares Listed on the Stock Market on a Selective Basis", *China Today*, May 2002, available at: <http://www.chinatoday.com.cn/English/e20025/basis.htm>, accessed June 12, 2012.

¹²⁴ Damodaran, Aswath, *Damodaran on Valuation: Security Analysis for Investment and Corporate Finance*, John Wiley, Hoboken, New Jersey, 2006, p. 255.

cent of such issued capital and 47 per cent of the market capitalisation was negotiable, because of the role of state-owned shares and legal person shares that exist in Mainland China. The issued capital of the SZSE had continued to accelerate since 1992, when its market capitalisation had endured continued volatility. Table 2.1 shows that the total market capitalisation of the SZSE increased steadily by and large from 1991 to 2000, although there was a modest devaluation in 1994 and 1995. Nevertheless, the market capitalisation of the SZSE continued to decrease sharply from 2001, from a peak of RMB 2,116,008 million in 2000 to merely RMB 933,414 million in 2005, which was only marginally higher than what it was in 1998. From 2006 the situation began to improve, and the market capitalisation of the SZSE hit a record high of RMB 5,730,201 million in 2007. Unfortunately, this figure soon plunged by almost 50 per cent towards the end of 2008. Unexpectedly, the market capitalisation of the SZSE again increased exponentially in 2009 and 2010 and it reached new heights in late 2010, of RMB 8,641,535 million. Nevertheless, the market capitalisation of the SZSE declined rapidly in 2011, which served to confirm the high volatility of China's stock markets.

Significantly, these official statistics on market capitalisation were somewhat exaggerated, since the figures included the non-tradable state shares and legal person shares. In 1991, the market capitalisation of tradable A and B shares traded on the SZSE was RMB 3,767 million, which accounted for only 47 per cent of the official capitalisation. In the following year, this value was down further to 34 per cent.

Technically, the ratio of negotiable capitalisation to total market capitalisation of the SZSE hovered around 35 per cent throughout the whole of the 1990s, and it did not change measurably until 2005, in which year this value finally passed the 40 per cent mark. This figure continued to increase for the next three years, and the SZSE's negotiable capitalisation overtook the non-tradable capitalisation for the first time in 2008, although the lead was not significant.¹²⁵ In broad terms, the underlying trend of negotiable capitalisation of the SZSE was increasing after 2005, and this was due in large part to the fact that the split share structure reform had commenced without incident. As more "original shares" were gradually released from trading restrictions after 2008, the value of all tradable shares formed about 61 per cent of the market capitalisation of the SZSE by the end of 2009.¹²⁶ Although this figure dropped by 3 percentage points in the following year, it soon began to rise again, finally reaching new heights at 63 per cent towards the end of 2011.

Although the originally non-tradable shares are still subject to certain trade restrictions after the expiration of their lockup period,¹²⁷ the ratio of the SZSE's negotiable capitalisation to its total market capitalisation is not expected to alter

¹²⁵ The tradable capitalisation accounted for 53 per cent of the total market capitalisation of SZSE in 2008.

¹²⁶ For the definition of "original shares", see People's Republic of China, *Guiding Opinions on the Listed Companies' Transfer of Original Shares Released from Trading Restrictions* (2008 Announcement No.15 of China Securities Regulatory Commission of the People's Republic of China), Article 1, promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of April 20, 2008, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=6764>, accessed June 21, 2012.

¹²⁷ See People's Republic of China, *The Measures for the Administration of the Share-trading Reform of Listed Companies* (2005 Order No.86 of China Securities Regulatory Commission of the People's Republic of China), Article 27, promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of September 4, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4552>, accessed October 4, 2011; these trade restrictions are intended to avoid the sudden rapid expansion of share supply, see Cheng, Li; Chiou, Jeng-Ren; Chen, Yenn-Ru and Lee, Bong Soo, "Market Reactions to the Split-share Structure Reform and the Determinants of Compensation: Evidence from Chinese Listed Firms", *Asia-Pacific Journal of Financial Studies*, Vol. 41, Issue 2, 2012, p. 196.

significantly in the foreseeable future. Nevertheless, there had been some major changes in the proportion of B shares' negotiable capital to its total issued capital after the split share structure reform came into effect. Table 2.2 illustrates that the ratio of B shares' negotiable capital to its total issued capital was 89.5 per cent in 2004. Then, this figure continued to rise and its total increase was in excess of 9.7 per cent by 2011, which topped out at 99.2 per cent. These changes could suggest that almost all issued capital of B shares has been negotiable. Hopefully, this will help to improve liquidity in the stock market, as well as the corporate governance of companies that are listed on the SZSE.

Table 2.1 Shenzhen Stock Exchange Statistics 1991-2000 (RMB ¥ Million)

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number of Listed Companies	6	24	77	120	135	237	362	413	463	514
Number of Listed Stocks*	6	33	95	142	161	270	399	454	504	557
A Shares	6	24	76	118	127	227	348	400	450	499
B Shares	/	9	19	24	34	43	51	54	54	58
Total Issued Capital** (Million Shares)	357.34	2,656.51	12,205.97	22,059.11	26,738.89	43,954.28	79,585.70	106,500.58	132,870.12	158,096.84
A Shares	357.34	2,211.91	11,151.57	20,500.18	24,048.10	39,947.94	73,837.13	99,785.60	125,920.28	149,225.31
B Shares	/	416.00	1,054.40	1,558.93	2,690.79	4,006.34	5,748.57	6,714.99	6,949.84	8,871.53
Negotiable Capital (Million Shares)	243.51	854.71	3,618.96	7,757.21	10,513.15	15,875.85	27,506.31	36,121.44	45,793.17	58,432.53
A Shares	243.51	681.21	2,998.85	6,759.96	8,378.31	12,576.94	22,529.83	30,152.98	39,751.63	51,440.87
B Shares	/	173.50	620.12	997.26	2,134.85	3,298.91	4,976.47	5,968.46	6,041.54	6,991.65
Market Capitalisation***	7,976.25	48,974.54	133,532.45	109,048.70	94,862.11	436,457.35	831,117.06	887,973.11	1,189,070.42	2,116,008.44
A Shares	7,976.25	45,753.72	125,101.30	103,249.72	87,686.52	413,242.65	812,174.04	877,391.40	1,172,690.97	2,085,943.42
B Shares	/	3,220.82	8,431.15	5,798.98	7,175.59	23,214.70	18,943.02	10,581.71	16,379.44	30,065.02
Negotiable Capitalisation	3,767.34	17,064.07	43,768.98	38,193.87	35,122.49	145,829.24	269,095.41	279,814.52	396,427.59	760,618.89
A Shares	3,767.34	15,725.82	38,863.15	34,350.95	29,589.05	126,695.49	252,822.58	270,310.00	382,752.70	737,742.13
B Shares	/	1,338.25	4,905.83	3,842.92	5,533.44	19,133.76	16,272.82	9,504.52	13,674.88	22,876.76

Source: Shenzhen Stock Exchange Fact Book 1991-2000¹²⁸

* The Number of Listed Stocks refers to the total number of the securities listed or traded on the Exchange.

** The Issued Capital refers to the outstanding capital of A and B shares, excluding that of H shares.

*** The Market Capitalisation = total issued capital stock x closing price.

¹²⁸ Shenzhen Stock Exchange, *Shenzhen Stock Exchange Fact Book*, available at: <http://www.szse.cn/main/en/MarketStatistics/FactBook/>, accessed June 15, 2012.

Table 2.2 Shenzhen Stock Exchange Statistics 2001-2011 (RMB ¥ Million)

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Number of Listed Companies	508	508	505	536	544	579	670	740	830	1169	1411
Number of Listed Stocks*	550	551	548	578**	586	621	712	782	872***	1211	1453
A Shares	494	494	491	484	481	464	455	454	455	473	472
B Shares	56	57	57	56	55	55	55	55	54	54	54
Total Issued Capital* (Million Shares)	167,391.49	173,514.77	182,753.84	200,446.79	213,364.81	237,583.29	278,171.79	344,185.80	390,756.18	504,497.52	627,846.31
A Shares	157,669.19	164,815.35	173,276.68	186,349.31	195,354.63	210,445.39	230,362.08	270,109.63	292,888.21	335,003.95	377,318.71
B Shares	9,722.31	8,699.41	9,477.15	10,874.12	12,395.77	12,817.16	13,845.56	14,915.74	14,994.90	15,313.04	16,223.96
Negotiable Capital (Million Shares)	64,335.18	68,740.56	74,022.26	82,280.97	93,429.75	117,690.06	151,121.79	202,375.36	260,107.82	341,085.17	450,605.56
A Shares	56,835.84	60,824.83	65,568.42	71,588.90	79,755.09	100,343.08	124,906.68	161,651.91	206,616.45	250,347.34	307,815.07
B Shares	7,499.33	7,915.73	8,453.84	9,733.39	11,454.34	11,879.04	13,549.30	14,701.51	14,794.34	15,184.79	16,103.88
Market Capitalisation*	1,593,163.91	1,296,540.62	1,265,279.40	1,104,122.72	933,414.96	1,779,151.76	5,730,201.98	2,411,453.09	5,928,389.28	8,641,535.43	6,638,187.21
A Shares	1,531,104.92	1,260,513.64	1,211,983.20	1,018,184.37	847,292.71	1,498,071.46	4,544,363.26	1,742,155.79	3,984,450.48	4,249,069.11	3,075,396.86
B Shares	62,058.99	36,026.98	53,296.21	44,595.21	37,967.10	79,550.70	121,155.07	42,328.94	95,675.36	119,483.07	76,479.00
Negotiable Capitalisation	608,105.63	501,725.78	497,737.65	433,776.26	387,590.57	857,530.88	2,853,217.82	1,290,799.08	3,645,365.39	5,077,296.81	4,206,994.10
A Shares	561,883.58	469,375.13	450,904.78	382,789.74	332,859.38	707,373.16	2,351,228.98	981,711.08	2,770,378.78	3,143,091.20	2,446,357.03
B Shares	46,222.05	32,350.65	46,832.87	38,990.43	36,201.85	77,795.06	119,623.23	41,820.48	94,733.09	118,609.26	75,877.04

Source: Shenzhen Stock Exchange Fact Book 2001-2011¹²⁹

* Please refer to the explanatory notes of Table 2.1 for the definition of these terms.

** Small and Medium Enterprises Board (SME Board) was inaugurated by SZSE in May 2004.¹³⁰

¹²⁹ Shenzhen Stock Exchange, *Shenzhen Stock Exchange Fact Book*, available at: <http://www.szse.cn/main/en/MarketStatistics/FactBook/>, accessed June 15, 2012.

¹³⁰ See Shenzhen Stock Exchange, Briefing of Small and Medium Enterprises Board, available at: <http://www.szse.cn/main/en/smeboard/aboutsmeboard/200408316286.shtml>, accessed June 16, 2012.

*** SZSE launched the ChiNext board, a market for high-growth, high-tech start-ups in October 2009.¹³¹

¹³¹ See Shenzhen Stock Exchange, About ChiNext, available at: <http://www.szse.cn/main/en/ChiNext/aboutchinext/>, accessed June 16, 2012.

The Shanghai Stock Exchange (SSE) was in operation by late 1990, a little earlier than the SZSE. Table 2.3 below shows that although there were only 8 companies listed on the SSE in 1990 and 1991, this figure increased steadily throughout the 1990s. The number of companies listing on the SSE had increased to 572 towards the end of 2000, which was slightly more than that of the SZSE in the same year. With this number continuing to rise rapidly until 2004, the SSE had outstripped the SZSE in terms of the number of companies listing by this time, as 837 Chinese companies had listed on the SSE. When the SSE experienced a major market slump from 2001 to 2005, a ban was imposed on new Initial Public Offering (IPO) in April 2005, and this ban was not lifted until one year later.¹³² Due to the IPO ban, only 3 new companies were listed on the SSE in 2005, while the total number of companies listed on the SSE had even decreased to 834, as several companies had been delisted. The SSE continued to raise capital for China's companies after 2005, but the number of companies listing had slowed considerably. There were only thirty or so new companies listed on the SSE in 2006 and 2007; this number shrank further to single figures in the following two years. Nevertheless, improvements have been seen since 2010, as more than 30 companies a year (on average) were newly listed on the SSE during 2010 and 2011, but this figure still trails behind that of the SZSE for the same period.

The number of companies listing on the SSE had started to level out from 2004, in

¹³² See Ong, Janet and Boey, Darren, "China Ends Yearlong Ban on IPOs - Issues New Rules", *Bloomberg*, May 18, 2006, available at: <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aF0kT7xPrfME&refer=home>, accessed August 13, 2012.

contrast to the SZSE for the same period. The SZSE had attracted many different types of companies to float on it since 2004, particularly after the Small and Medium Enterprises Board (SME Board) and ChiNext Board were inaugurated in 2004 and 2009, respectively. According to data published by the World Federation of Exchanges, the SZSE enjoyed the fastest growth among the world's 52 stock exchanges in terms of trading volume in 2011.¹³³ It seems that the SZSE had encouraged more innovation in recent years in comparison with the SSE, and this had allowed the SZSE to gain a competitive advantage over rival stock exchanges. The Greater China IPO statistics of Ernst & Young show that the SME board and ChiNext board of the SZSE had accomplished 205 and 116 IPO deals, respectively, in 2010, when the capital that had been raised came to US\$ 44.3 billion in total.¹³⁴ By contrast, the SSE concluded only 26 IPO deals in 2010, which had raised US\$ 27.9 billion for Chinese companies. It is noticeable that the SSE was trailing far behind the SZSE by 2010, in both the number of IPO deals and the amount of capital raised. Moreover, the SZSE outperformed the SSE again in 2011 with 243 IPO deals and US\$ 27.8 billion US of fund raising, while the SSE raised only US\$ 15.1 billion through 37 IPO deals in the same year. It is notable that the amount of funds raised by the SZSE even surpassed that of the Hong Kong Stock Exchange (HKEx) in 2011, which singled it out as the outstanding performer among all stock exchanges in the Greater China region.

¹³³ See Price, Michelle and Cave, Tim, "Shenzhen Stock Exchange Boasts World's Fastest Growth", *Financial News*, Mar 21, 2011, available at: <http://www.efinancialnews.com/story/2011-03-21/shenzhen-boasts-fastest-growth>, accessed August 15, 2012.

¹³⁴ Ernest & Young, *Global IPO Trends 2012: Prepare Early, Move Fast*, July 9, 2012, p. 10, available at: <http://www.ey.com/CA/en/Newsroom/News-releases/2012-IPO-Trends>, accessed August 16, 2012.

According to Tables 2.3 and 2.4, the SSE issued only 261 million shares in 1990 while its capitalisation was RMB 1,234 million. There was a rapid rise in the issued share volume of the SSE after 1992, and its market capitalisation had accelerated simultaneously. Technically, the whole period of the 1990s saw a continuation in the rise in these two barometers of the SSE. The Exchange continued to issue more shares after 2000, but its capitalisation was not as stable as it had previously been, as fluctuations were rather erratic in some years. Between 2000 and 2005, there had been peaks and troughs in the capitalisation of the SSE, but generally things were looking settled, while the *bear market* that began in early 2006 pushed the capitalisation of the SSE up to RMB 7,161,238 million. The year 2007 was another successful year for the SSE as its capitalisation reached new heights, which at RMB 26,983,887 million, had nearly quadrupled the amount in 2006. Nevertheless, this figure quickly fell to RMB 9,725,191 million in the following year, down by almost two-thirds on 2007. The capitalisation of the SSE rallied considerably in 2008, but volatility destroyed trillions of RMB of its market value in the subsequent two years.

Basically, the cause of the high volatility of China's stock market was the conjunction of many factors, which included high rates of inflation, the rise and fall in interest rates, the enactment of new tax rules, unfavourable global economic conditions, as well as the notorious speculation and rampant illegal trading.¹³⁵

¹³⁵ There are many papers that can provide an entrance for numerous useful discussions about the notoriously high volatility of China's stock market; See Bellotti, Xijuan Angel; Taffler, Richard and Tian, Lin, "Understanding

Although the SZSE had grown rapidly in the recent years, its market value was still notably lower than that of the SSE in almost every year. This is largely due to the fact that the China Securities Regulatory Commission (CSRC), which is the main securities regulator of China, lent significant weight to the SSE during the earlier stages of the development of China's stock market, when its aim was to mould the SSE into China's main board market. This policy would also enhance the financial centre status of Shanghai.¹³⁶ Thus, many major Chinese SOEs had been listed on the SSE at the instigation of the CSRC. Technically, only those Chinese companies with some degree of state ownership could launch an IPO before the ChiNext board of the SZSE was inaugurated. Despite the fact that the SZSE had attracted hundreds of companies to float on it in recent years, the vast majority of these companies were smaller, mainly private companies.

However, the size of the SSE does not really stand up to scrutiny, nor does that of the SZSE, since the SSE also included a disproportionately large amount of non-tradable state shares and legal person shares. Table 2.4 shows that the negotiable market capitalisation formed about 31 per cent of the SSE's total market value by the end of 2000. From 2001 to 2005, this ratio did not alter significantly, generally standing at 28 per cent. The Split Share Structure Reform sought to make an increasing

the Chinese Stockmarket Bubble: The Role of Emotion", available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1695932, accessed August 22, 2012.

¹³⁶ Zhou, Qinye, "Shanghai Stock Exchange: History and Prospects", in *China's Emerging Financial Markets: Challenges and Global Impact*, Zhu, Min; Cai, Jinqing and Avery, Martha (edited), John Wiley & Sons, Singapore, 2009, p. 241.

proportion of state owned shares tradable on securities markets. Although the SSE took the first tentative steps to introduce the Split Share Structure Reform in 2005, the ratio of the SSE's negotiable market value to its total market capitalisation initially showed little sign of improving. Instead, it dipped to 23 per cent during 2006 and 2007. In 2008, there was a slight increase in this figure and it returned to the usual level, which was typically over 30 per cent. The Split Share Structure Reform began to show results from 2009, and the negotiable market capitalisation had accounted for 62 per cent of the total market value of the SSE by this year. During 2010 and 2011, the Split Share Structure Reform sent this said ratio into a dramatic increase, reaching 82 per cent towards the end of 2011. According to official statistics, the Split Share Structure Reform in China seems to have proved highly successful.

Table 2.3 Shanghai Stock Exchange Statistics 1990-1998 (RMB ¥ Million)

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998
Number of Listed Companies	8	8	29	106	171	188	293	383	438
Number of Listed Stocks*	8	8	38	123	203	220	329	422	477
Issued Volume (Million Shares)	261.00	272.00	4,694.00	23,554.00	41,888.00	56,066.00	74,986.00	97,537.00	128,035.00
Market Capitalisation*	1,234.00	2,943.00	55,840.00	220,620.00	260,013.00	252,566.00	547,781.00	921,806.00	1,062,592.00

Source: Shanghai Stock Exchange Fact Book 2011 and Historical Data of Shanghai Stock Exchange official website¹³⁷

* Please refer to the explanatory notes of Table 2.1 for the definition of these terms.

¹³⁷ Shanghai Stock Exchange, *Shanghai Stock Exchange Fact Book 2011*, p. 196, available at: http://www.sse.com.cn/sseportal/en_us/ps/about/fact.shtml, accessed June 15, 2012; and Shanghai Stock Exchange, Market Data: Historical Data, available at: http://www.sse.com.cn/sseportal/en_us/ps/md/sh_b_hd.jsp, accessed June 15, 2012.

Table 2.4 Shanghai Stock Exchange Statistics 1999-2011 (RMB ¥ Million)*

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Number of Listed Companies	484	572	646	715	780	837	834	842	860	864	870	894	931
Number of New Listed Companies	46	88	75	70	67	61	3	13	25	6	9	28	39
Number of Listed Stock**	525	614	690	759	824	881	878	886	904	908	914	938	975
A Shares			636	705	770	827	824	832	850	854	860	884	921
B Shares			54	54	54	54	54	54	54	54	54	54	54
Issued Volume (Million Shares)	158,015.00	203,242.00	316,444.00	372,784.00	417,039.00	470,055.00	502,305.00	1,027,954.00	1,417,310.00	1,541,039.00	1,665,996.00	2,193,951.00	2,346,665.00
Negotiable Shares Volume (Million Shares)	49,441.00	64,899.00	83,753.00	99,253.00	115,710.00	136,658.00	156,121.00	225,448.00	339,930.00	491,604.00	1,157,856.00	1,603,130.00	1,799,380.00
Market Capitalisation**	1,458,047.00	2,693,086.00	2,759,056.00	2,536,372.00	2,980,492.00	2,601,434.00	2,309,613.00	7,161,238.00	26,983,887.00	9,725,191.00	18,465,523.00	17,900,724.00	14,837,622.00
Negotiable Market Capitalisation	424,969.00	848,133.00	838,211.00	746,730.00	820,114.00	735,088.00	675,461.00	1,642,833.00	6,453,217.00	3,230,591.00	11,480,500.00	14,233,744.00	12,285,136.00
Capital raised by A shares	48,287.00	91,068.00	95,749.00	61,430.00	55,741.20	45,690.10	30,875.00	171,351.00	670,133.00	223,685.00	334,315.00	553,214.00	319,969.00
Capital raised by B shares (US\$)	42.80	44.00	0.00	0.00	42.80	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Source: Shanghai Stock Exchange Fact Book 1999-2011¹³⁸

* It seems that the historical statistics of Shanghai Stock Exchange Fact Book are not strictly accurate, as some of the information appears to be in conflict with other data. These conflicts have been reviewed, and only the relatively credible data has been chosen for this research.

** Please refer to the explanatory notes of Table 2.1 for the definition of these terms.

¹³⁸ Shanghai Stock Exchange, *Shanghai Stock Exchange Fact Book*, available at: http://www.sse.com.cn/sseportal/en_us/ps/about/fact.shtml, accessed June 15, 2012.

By comparison, H shares¹³⁹ could be defined as a more attractive proposition for overseas investors, since strict listing rules must be continuously complied with when Mainland corporations launch a public offer of H shares on the Hong Kong Stock Exchange (HKEx). The first IPO of H shares resulting from the Tsingtao Brewery in July 1993 was judged to have been a resounding success as there was an oversubscription of 110 times the available shares.¹⁴⁰ Further issuances such as the Guangzhou Shipyard International and Beiren Printing followed swiftly and the capital raised by H shares amounted to HK\$ 8,224 million by the end of 1993.¹⁴¹ In the prehistory of H shares, the central government tended to select former giant state-own enterprises for listing from a parochial view of responsibilities. However, the majority of these enterprises had a universal problem in that they could not avoid the heavy burden of their traditional welfare and excessive labour commitments.¹⁴² Moreover, most loss-making Mainland SOEs lost their advantage after their considerable state subsidies had been severely curtailed; this was because China's authorities aimed to alleviate the protracted pressure on government budgets.¹⁴³ This was also one of China's major commitments in its negotiations with the World Trade Organization (WTO).¹⁴⁴ In addition, it was surprising to discover that a certain

¹³⁹ By the definitions of The Securities and Futures Commission (SFC) of Hong Kong and HKEx, H-share companies refer to companies incorporated in the PRC and approved by the CSRC for a listing in Hong Kong. The par value of the shares of these Chinese enterprises is denominated in RMB, and the shares are subscribed for and traded in HKD or other currencies. See Table B2 of Market & Industry Statistics in Research & Statistics Section of SFC website, available at: <http://www.sfc.hk/sfc/html/EN/research/stat/stat.html>, accessed September 9, 2009.

¹⁴⁰ *Financial Times*, February 12, 1996.

¹⁴¹ *China Quarterly*, Wardley James Capel, Hong Kong, March 1994, p. 5.

¹⁴² Thomas, William Arthur, *Western Capitalism in China: A History of the Shanghai Stock Exchange*, Ashgate, Farnham, 2001, p. 303; *China Research*, CLSA, Hong Kong, February 1997, p. 16.

¹⁴³ Eckaus, Richard S., "China's Exports, Subsidies to State-Owned Enterprises and the WTO", *China Economic Review*, Vol. 17, Issue 1, 2006, p. 1.

¹⁴⁴ "The delegate of the U.S. stated that China's subsidies to state-owned enterprises running at a loss were illustrative of his delegation's concerns with China's inadequate disclosure before the Committee. These

proportion of the subscription obtained from H share listing had been diverted to risky businesses such as property deals, shares and futures.¹⁴⁵ A multiplicity of these disadvantages, together with underlying political uncertainties, detracted from the ephemeral success of H shares when the enthusiasm of foreign investors subsided.

Given the fiasco that had occurred with the issue of B shares and H shares, foreign investors took a more optimistic view of “Red Chips” enterprises.¹⁴⁶ Although most Red Chips were owned by the Chinese government, either directly or indirectly, almost all Red Chips were headquartered in Hong Kong.¹⁴⁷ With most Red Chips listed on the HKEx through a subsidiary or Listing Vehicle incorporated offshore, they were also largely run by foreign quality management techniques, which made them less vulnerable to the fluctuations of excessive Mainland bureaucracy. The Red Chip index had already increased by 41 per cent by late 1996,¹⁴⁸ and the total

subsidies were to end in 2000 according to China’s Protocol of Accession. In 2002, the representative of China told the Committee that these subsidies had been eliminated in 2001. Then, according to the U.S., during last year’s transitional review, China failed to respond to the questions of the U.S. delegation regarding Chinese press reports in 2003 that the government was still working to eliminate these subsidies and that it hoped to do so by 2005. The delegate of the U.S. asked China to provide the Committee with information on these subsidies”, World Trade Organization (WTO), Committee on Subsidies and Countervailing Measures, G/SCM/115 (04-5071), *Chairman’s Report to the Council for Trade in Goods on Transitional Review of China*, November 22, 2004, available at: www.jmcti.org/2000round/China/TRM/2004/g_scm_115.pdf, accessed September 27, 2011.

¹⁴⁵ *Hong Kong Economic Daily*, May 23, 1995, A3; also Jenkins, Holman, “In China, Beer and Capitalism Don’t Mix”, *Asian Wall Street Journal*, November 21, 1995, A17; *Hong Kong Economic Journal*, May 25, 1995, p. 2.

¹⁴⁶ By the definitions of The Securities and Futures Commission (SFC) of Hong Kong and HKEx, Red Chip companies refer to companies which: (1) have at least 30 per cent shareholding held in aggregate by Mainland China entities, and / or indirectly through companies controlled by them, with the Mainland China entities being the single largest shareholders in aggregate terms; or (2) if the shareholding of the company held in aggregate directly and / or indirectly by Mainland China entities is below 30 per cent but is 20 per cent or above and there is a strong influential presence, on a judgemental basis, of Mainland China-linked individuals on the company’s board of directors. Mainland China entities include state-owned enterprises, and entities controlled by provincial and municipal authorities. See Table B2 of Market & Industry Statistics in Research & Statistics Section of SFC website, available at: <http://www.sfc.hk/sfc/html/EN/research/stat/stat.html>, accessed September 9, 2009.

¹⁴⁷ See Zheng, Yongnian, *Globalization and State Transformation in China*, Cambridge University Press, Cambridge, 2004, pp. 129-134.

¹⁴⁸ See Segal, Philip, “The ‘Red Chip’ Danger”, *The New York Times*, November 2, 1996, available at: <http://www.nytimes.com/1996/11/02/your-money/02iht-mbanks.t.html>, accessed September 27, 2011.

market capitalisation of Red Chips amounted to HK\$ 473 billion at the end of 1997, which exceeded that of H shares by nearly ten to one (see Table 2.5 below).¹⁴⁹ As most Red Chip enterprises could obtain full backing from municipal governments, there was a general expectation that high quality assets would be injected into the listing vehicle corporation. As the Mainland governmental entities could not export good assets within a reasonable time, the Red Chip boom was devastated by the advent of the Asian financial crisis in 1998.¹⁵⁰ In recent years, there have been widespread rumours that the Red Chip stocks would return to China's Mainland's A-share market, and a report by Hong Kong's Wen Wei Po also confirmed the further progress of relevant preparatory work.¹⁵¹

Table 2.5 shows that the market value of H shares listed on the HKEx was increasing faster than ever after 2005, and that this figure had increased fourfold during 2006 and 2007. When the Hong Kong stock market became badly affected by the global financial crisis in 2008, the market capitalisation of both Red Chips and H shares was down by almost 50 per cent in that year.¹⁵² Notwithstanding, the market value of H shares made a remarkable recovery after the recession, and it finally overtook that of Red Chips in 2009, maintaining its lead in the following two years.

¹⁴⁹ See Table B5 of Market & Industry Statistics in Research & Statistics Section of SFC website, available at: <http://www.sfc.hk/sfc/html/EN/research/stat/stat.html>, accessed September 9, 2009.

¹⁵⁰ Walter, Carl E. and Howie, Fraser J. T., *'To Get Rich Is Glorious!': China's Stock Markets in the '80s and '90s*, Palgrave Macmillan, Basingstoke, 2001, p. 194.

¹⁵¹ Reuters, "China Clears Way for Red-Chip Market Return", *China Daily*, June 8, 2007, available at: http://www.chinadaily.com.cn/china/2007-06/08/content_890460.htm, accessed September 27, 2011.

¹⁵² See Xinhua News Agency, "HK Stock Market Capitalization Halved in 2008", March 4, 2009, available at: http://www.china.org.cn/business/news/2009-03/04/content_17369955.htm, accessed September 5, 2012.

The Growth Enterprise Market (GEM) is an alternative market tier of the HKEx that was established in 1999 for growth companies, and it provides extra fund raising opportunities for those companies that cannot fulfil the listing requirements of the main board of the HKEx.¹⁵³ Unfortunately, it seems that the GEM gave a poor account of itself since its market value could not be compared to that of the main board. Technically, the market capitalisation of all Red Chips listed on the GEM was only approximately HK\$ 1 billion before 2006. In 2007, there was a steep rise in this figure, but it quickly fell back to HK\$ 1 billion in the following year. Although the said number was again on the rise in 2009, it experienced another downturn in 2010 and 2011. By comparison, those H shares listed on the GEM of HKEx conducted themselves far better than the Red Chips. The market value of H shares listed on the GEM kept rising at a reasonable rate from 2000 to 2007, as Table 2.5 shows. In spite of the dramatic drop caused by the global economic slowdown that began in 2008, the market capitalisation of H shares listed on the GEM totalled some HK\$ 27.1 billion in 2009, making them over one quarter of the size of all shares that were listed on the GEM. Unfortunately, the weak Hong Kong stock market had sent those H shares listed on the GEM into an abrupt decline in the two years that followed, and their value shrunk to only HK\$ 4.6 billion at the end of 2011, which was worth only 5.4 per cent of the total market capitalisation of the GEM.

As Hong Kong has a free market economy that is closely linked to international

¹⁵³ See Hong Kong Stock Exchange, About GEM: The Market for Growth Enterprises, available at: http://www.hkgem.com/aboutgem/e_default.htm, accessed September 5, 2012.

finance and trade, these H share and Red Chip companies listed on HKEx became more exposed to global economic conditions in comparison with the Mainland companies listed on the SZSE or SSE. On the other hand, the HKEx was also increasingly influenced by the rapid developments of Mainland China.¹⁵⁴ The market value of H shares and Red Chips that listed on the main board of the HKEx added up to HK\$ 8,095 billion towards the end of 2011, which had already accounted for more than 46 per cent of the total market capitalisation of the HKEx's main board. In fact, the main board of the HKEx hosted only 143 H share companies and 103 Red Chip companies,¹⁵⁵ and the sum total of such H shares and Red Chips accounted for only 18.5 per cent of the total number of companies listed.¹⁵⁶ These statistics suggest that H share and Red Chip companies listed on the main board of the HKEx could expect to raise more funds than other HKEx main board listed local or foreign companies. In contrast, these H shares and Red Chips listed on the GEM of the HKEx could not attain a considerable size, and their market capitalisation showed unusual volatility periodically, reflecting that these small-caps companies were especially vulnerable in cases of a volatile economic and financial market environment.

¹⁵⁴ Oxford Analytica, "HKEx Becomes More China Exposed", *Forbes*, May 18, 2010, available at: <http://www.forbes.com/2010/05/17/hong-kong-hkex-business-oxford-analytica.html>, accessed September 6, 2012.

¹⁵⁵ Hong Kong Stock Exchange, List of H Share Companies (Main Board) and List of Red Chip Companies (Main Board), available at: <http://www.hkex.com.hk/eng/stat/smstat/chidimen/chidimen.htm>, accessed September 6, 2012.

¹⁵⁶ There were 13,26 companies listed on the main board of HKEx in 2011; see Hong Kong Stock Exchange, *Hong Kong Stock Exchange Fact Book 2011*, p. 15, available at: <http://www.hkex.com.hk/eng/stat/statrpt/factbook/factbook2011/fb2011.htm>, accessed September 6, 2012.

Table 2.5 Market Capitalisation by Stock Type of Hong Kong Stock Exchange 1997-2011 (HK\$ billion)

Year	Main Board				Growth Enterprise Market		
	Total	Of which			Total	Of which	
		Hang Seng Indexes Constituents*	Red Chips	H Shares		Red Chips	H shares
1997	3,202.3	2,132.0	473.0	48.6	n/a**	n/a	n/a
1998	2,661.7	2,106.0	335.0	33.5	n/a**	n/a	n/a
1999	4,727.5	3,744.0	956.9	41.9	7.2	1.3	0.0
2000	4,795.2	3,866.1	1,203.6	85.1	67.3	0.8	1.0
2001	3,885.3	3,136.8	908.9	99.8	61.0	1.0	1.9
2002	3,559.1	2,684.6	806.4	129.2	52.2	0.8	2.4
2003	5,477.7	3,859.6	1,197.8	403.1	70.2	n/a	5.1
2004	6,629.2	4,429.1	1,409.4	455.2	66.7	0.7	6.4
2005	8,113.3	4,685.9	1,710.0	1,280.5	66.6	0.8	6.4
2006	13,248.8	8,191.3	2,951.6	3,363.8	88.9	0.8	15.0
2007	20,536.5	13,284.5	5,514.1	5,056.8	161.1	10.4	23.7
2008	10,253.6	7,208.8	2,874.9	2,720.2	45.2	1.0	11.6
2009	17,769.3	10,812.3	3,862.1	4,686.4	105.0	6.6	27.1
2010	20,942.3	12,056.5	4,380.7	5,210.3	134.7	5.3	20.2
2011	17,452.7	10,481.3	3,999.1	4,096.7	84.6	3.4	4.6

Source: Market & Industry Statistics data from The Securities and Futures Commission (SFC) of Hong Kong¹⁵⁷

¹⁵⁷ The Securities and Futures Commission of Hong Kong, Market & Industry Statistics, B: Hong Kong Markets, Table B5 Market Capitalization by Stock Type, available at:

* As some red chips and H-shares are also Hang Seng Indexes constituents, figures reported in this table are not exclusive.

** The Growth Enterprise Market was launched by HKEx in November 1999.¹⁵⁸

<http://www.sfc.hk/sfc/html/EN/research/stat/stat.html>, accessed June 15, 2012; also Hong Kong Stock Exchange, *Hong Kong Stock Exchange Fact Book*, available at: <http://www.hkex.com.hk/eng/stat/statrpt/factbook/factbook.htm>, accessed June 15, 2012.

¹⁵⁸ See Young, Leslie, "Institutions and Knowledge Networks: The Chinese Experience", in *Learning and Knowledge for the Network Society*, Gibson, David V.; Heitor, Manuel V. and Ibarra-Yunez, Alejandro (edited), Purdue University Press, West Lafayette, 2005, p. 111.

II. THE FUNCTION OF STOCK MARKETS

Traditionally, the stock market has been considered one of the most important vehicles for corporations to raise funds. As the shares of corporations are publicly traded on an organised market, all kinds of corporations can obtain the equity capital they need for their expansion and development. Some scholars have termed this as an “important economic purpose” since business enterprises can acquire “long-term debt” from the public.¹⁵⁹ Nevertheless, it seems there is a noticeable difference on this issue between those firms coming from developed markets and those from emerging markets, although they all raise substantial funds from the capital markets. For instance, a significantly higher proportion of U.K. corporations expend considerable proportions of their profits on new net investment than is the case on China’s Mainland. It is generally believed that more than half of the net investment of U.K. companies is funded by these kinds of “internal funds”.¹⁶⁰ In addition, ordinary U.K. corporations can also obtain substantial borrowings from banks. In reality, only slightly more than 20 per cent of investments by UK corporations are funded by means of the issue of new securities.¹⁶¹

Stock markets generally consist of two parts: a primary market to issue new shares and a secondary market to trade shares that have already been issued previously. With the help of experienced underwriters (sometimes in the form of syndicates),

¹⁵⁹ Loss, Louis, *Fundamentals of Securities Regulation*, Little Brown and Co., Boston, 1983, p. 667.

¹⁶⁰ Howells, Peter and Bain, Keith, *Financial Markets and Institutions*, Prentice Hall, New York, 2007, p. 150.

¹⁶¹ Howells, Peter and Bain, Keith, *Financial Markets and Institutions*, Prentice Hall, New York, 2007, p. 150.

companies issue their equity to the public on the new-issuance markets. Then, investors can buy and sell such securities on the trading floor (where there is one). As a result, liquidity is an outstanding and attractive feature of stock markets, when compared to other less liquid investments such as real estate, since investors can purchase securities freely, and such securities can be quickly and easily disposed of at a later time and at a reasonable price. Trading markets are also a “price setting mechanism”, as “the use of securities as collateral for loans” can be facilitated and a company can also get an assurance of the price of issuing additional securities.¹⁶²

Essentially, stock markets are also a mechanism for capital allocation as supply and demand can be generally reflected in prices in the long-term. Thus, it is arguable that an enterprise with good prospects can raise finance from stock markets as it can return a high rate of earnings annually for investors. This key characteristic is essential for most developing countries, such as China, since it is quite difficult for most small and medium-sized enterprises (SMEs) to obtain sufficient funds from commercial banks in developing countries. In addition, most SMEs in developing countries cannot retain enough of their profits for further investment and development as they are still in their infancy. In the face of stiff competition from stock markets, commercial banks would probably prefer to furnish enterprises with more funds on better conditions so as to gain a competitive advantage.

¹⁶² Loss, Louis, *Fundamentals of Securities Regulation*, Little Brown and Co., Boston, 1983, p. 668.

The costs and risks of financing structures are a major concern for most modern corporations, and listing on public stock markets can be a potential solution for them as the stock market can protect them from “higher interest rates and a credit crunch”.¹⁶³ Moreover, stock markets can also be employed as instruments of long-term assets management for the governments of developing countries. For instance, China's national pension fund (National Social Security Fund), which had a goal of amassing around RNB 1 trillion (US\$ 203 billion) in assets by the end of 2010, is planning to explore additional investment opportunities and the stock market is probably a desirable choice for managing such assets effectively. This is also very helpful for those governments that are in transition from a traditional planned economy to a market-oriented economy.

On the other hand, stock markets can also have a negative effect on the economy if adequate regulation and strict discipline are absent, especially for those developing countries that are still in the early stages of economic development. Corporations will have incentives to behave unfairly if there is no adequate supervision and law enforcement. In an immature stock market such as China's, which is imbued with insider dealing and price manipulation, investors cannot rely upon the integrity of corporate disclosure, as much information that is provided by companies is unreliable. In such circumstances, investing in stock markets gradually turns into speculation, and small investors all seek to gain short-term advantages since they

¹⁶³ Green, Stephen, *China's Stock Market: A Guide to Its Progress, Players and Prospects*, Bloomberg Press, London, 2003, p. 3.

cannot obtain real long-term protection. Thus, the basic economic benefit of stock markets as capital channels has been abandoned as high-quality corporations having bright growth prospects cannot actually obtain funds from such markets. If governments invest public funds, such as China's national pension fund, in such a “lottery”, it would be likely to cause immeasurable harm to the economy of the country as a whole. This can also explain why most developing countries place a priority on developing their banking system rather than their stock markets, as the usage of loan capital can be monitored more easily and effectively by a commercial bank.

III. SUMMARY

The historical data and statistics reviewed in this chapter help to clarify the factors affecting the governance mechanisms of China's listed companies, as well as the economic and legal circumstances that China's companies are situated in. Most major Chinese companies, especially giant SOEs, began to make sincere attempts to access foreign capital markets in response to the kinds of defects and inadequacies that existed within China's corporate governance system.

There is a necessity to review the traditional western corporate governance theories, as well as the corporate governance practices of China's major companies before we explore the overseas listing activities of Chinese companies. Furthermore, a detailed

analysis of the Spilt Share Structure Reform will also be provided in the next chapter, since this reform would potentially have a considerable effect on the ownership structure of most leading listed Chinese companies.

CHAPTER 3. THE CORPORATE GOVERNANCE OF CHINESE COMPANIES

The Chinese government had given top priority to reforming the enterprise system, inter alia the State-Owned Enterprises (SOEs), since the very beginning of China's economic reforms. The establishment of modern enterprise systems as a major objective in the economic reforms originally emanated from the Third Plenary Session of the Fourteenth Central Committee held by the Chinese Communist Party (CCP) in 1993.¹⁶⁴ In reality, the notion of "modern enterprise systems" was a *de facto* transplantation of the arrangement of corporate governance and company management from the industrialised countries, and this transplantation was dysfunctional to a certain degree. In addition, the process of listing SOEs on China's stock exchanges and on foreign stock exchanges had also been employed as a major instrument to improve the productivity and profitability in the transformation of SOEs. Arguably, the vast majority of China's corporations would benefit from the corporate governance models and corporate organisational forms imported from the West regardless of their ownership structures. As these imported corporate mechanisms had been refined over many years in industrialised countries, they naturally possessed some desirable characteristics. However, a more global approach

¹⁶⁴ The plenum decided to further transform the operating mechanism of state-owned enterprises and establish modern enterprise system with "clear property rights, clear powers and responsibilities, separation of government from enterprises and scientific management" measures that met the requirements of the market economy ("Decisions on Some Issues in Establishing the Socialist Market Economic System"), see *China Documents Annual*, Vol. 5, Chapter 2, Moody, Peter R. edited, Academic International Press, Gulf Breeze, 1993.

should be taken in developing the system of corporate governance for both SOEs and private enterprises, as the multifaceted attributes of China's economy and complex social environment demanded comprehensive survey.

In a broad sense, there was a relationship between the reasonableness of corporate governance and management structure with the performance of enterprises, as along with the market-oriented economy that had been gradually introduced into China, some indebted SOEs with chronic financial difficulties had become a heavy burden for the fiscal budget. Furthermore, despite favourable fiscal subsidies to SOEs, they operating at a loss,¹⁶⁵ and had also strangled the growth of emerging private-sector enterprises. The establishment of a corporate sector with due competition would therefore be beneficial to the development of China, but the true extent of the problem regarding corporate governance should be investigated thoroughly when the financial interests of the state in SOEs deserved effective protection and promotion.¹⁶⁶ When the transformation of ownership structure was of primary importance in the reform of China's SOEs, some further steps were taken so as to tackle the fossilised problem of corporate governance in state-owned conglomerates.

Traditionally, China's SOEs employed the majority of the workforce in urban areas and had accordingly become the *de facto* "patron" of social welfare for workers.

Although China's central government aimed to reduce the SOE sector, a 20

¹⁶⁵ Putterman, Louis, "The Role of Ownership and Property Rights in China's Economic Transition", *The China Quarterly*, Vol. 144, 1995, p. 1047.

¹⁶⁶ Tam, On Kit, *The Development of Corporate Governance in China*, Edward Elgar, Cheltenham, 1999, p. 2.

million-strong workforce was still engaged in the SOE sector by 2002.¹⁶⁷ This figure had elevated to over 42 million with a total wage bill of more than RNB 1,313 billion by the end of 2008,¹⁶⁸ since some SOEs had acquired shares in private-sector enterprises by the approach of merger and takeover. There was a sense in which the family network of employees was also caught up in the extension of this comprehensive welfare provision.¹⁶⁹ This situation was said to be the typical origin of the problems of overstaffing and poor productivity in most SOEs.

After being transformed into the corporate form through the economic reforms, the operation of most Chinese SOEs had been subsumed under the umbrella of Company Law. On the other hand, private-sector listed corporations were emerging as significant players in the Mainland market as they gradually acquired the capability to compete with SOEs in selected fields. While the institutional significance of SOEs and giant corporations compelled the attention of China's policymakers, Chinese corporate governance discourse in practice focused almost exclusively within SOEs and listed companies following a rational approach.¹⁷⁰ Since China's economic and social contexts were substantially different from those of industrialised countries, China's policymakers stumbled over the selection of corporate governance models, as no idealised models could perfectly serve the economic transitional process of China in principle.

¹⁶⁷ See *Statistical Yearbook of China 2003*, China Statistical Press, Beijing.

¹⁶⁸ See *Statistical Yearbook of China 2009*, China Statistical Press, Beijing.

¹⁶⁹ Cooke, Fang Lee, *HRM, Work and Employment in China*, Routledge, Abingdon, 2005, p. 43.

¹⁷⁰ Clarke, Donald C., "Corporate Governance in China: An Overview", *China Economic Review*, Vol. 14, Issue 4, 2003, p. 494.

With the term of “corporate governance” referring to the structures and management of corporations, the Principles of Corporate Governance drawn up by the Organisation for Economic Co-operation and Development (OECD) identified its key aspects as: “the rights and equitable treatment of shareholders, the role of stakeholders, disclosure and transparency, and the responsibilities of the Board of Directors.”¹⁷¹ This definition had gained acceptance throughout much of the Chinese academic world. While the definition and importance of corporate governance filled considerable column inches in Chinese broadsheets, most Chinese scholars had largely ignored the noteworthy interactive relationship between the system of corporate governance and other social systems, such as the legal framework and political system. Just as it was noted in Ronald Coase’s classic discourses, transaction costs depended to a certain degree on the functioning of the legal system and the educational system,¹⁷² with the company actually representing a complex nexus of contractual relationships.¹⁷³ Moreover, as we learnt from the New Institutional Economics, the working of the economic system could also be confined by other social systems in some way since the transaction costs were non-zero in the real world.¹⁷⁴ Furthermore, the reform of corporate governance regarding SOEs in China was largely about trying to deviate from the chronic

¹⁷¹ See International Finance Corporation, *A Corporate Governance Approach Statement by Development Finance Institutions*, available at: http://www.ifc.org/ifcext/corporategovernance.nsf/Content/DFI_Statement, accessed February 15, 2011.

¹⁷² Coase, Ronald, *The Firm, the Market, and the Law*, University Of Chicago Press, Chicago, 1990.

¹⁷³ Coase, Ronald, “The Nature of the Firm”, *Economica*, New Series, Vol. 4, No. 16, 1937, p. 386.

¹⁷⁴ Coase, Ronald, “The Institutional Structure of Production”, *The American Economic Review*, Vol. 82, No. 4, 1992, p. 713.

dilemma of administrative intervention by the bureaucratic apparatus.¹⁷⁵ It seemed that the major concerns of Chinese scholars diverged greatly from the established criteria in traditional theories of corporate governance in the West, such as the ideas of accountability, allocative efficiency and the minimisation of agency costs.¹⁷⁶

It seems that scholars coming from different European jurisdictions had mixed interpretations of the term “corporate governance”.¹⁷⁷ In China, “corporate governance” was a relatively new notion which was generally defined by reference to the financial subjugation to the establishment of a “socialist market economy” for China.¹⁷⁸ Even the notion of a “company” was perceived from different perspectives by Chinese scholars. Conventional perceptions among Chinese academia held that the Anglo-American model of corporate governance had an inbuilt advantage over other models, since minority shareholders and stakeholders could gain extra protection by the vintage mechanisms of accountability and fiduciary duties. Nevertheless, few Chinese SOEs or other economic organisations had the structural similarities in ownership to American listed corporations, as dispersed ownership was widespread among most major enterprises in North America.¹⁷⁹ As envisaged

¹⁷⁵ See Wu, Jinglian, *Modern Companies and Enterprise Reform*, Tianjin People Press, Tianjin, 1994.

¹⁷⁶ Hilmer, Frederick G., “The Functions of the Board: A Performance-Based View”, *Corporate Governance: An International Review*, Vol. 2, Issue 3, 1994, p. 170.

¹⁷⁷ Wymeersch, Eddy, “The Corporate Governance Discussion in Some European States”, in *Contemporary Issues in Corporate Governance*, Prentice, D. D. and Holland, P. R. J. edited, Oxford University Press, Oxford, 1993, p. 3.

¹⁷⁸ See Communist Party of China, “Decisions by the Central Committee of the Chinese Communist Party of China on Various Issues Concerning the Establishment of a Socialist Market Economic System”, November 14, 1993.

¹⁷⁹ Coffee, John C., “The Rise of Dispersed Ownership: The Role of Law in the Separation of Ownership and Control”, *The Yale Law Journal*, Vol. 111, No. 1, 2001, p. 1.

by the Path Dependency Theory in corporate governance,¹⁸⁰ the evolution of economic organisations was heavily constrained by the pre-existing conditions and relevant history. As a result, the examination of corporate governance arrangements in China proceeded against a background in which the relevant factors of economic, legal and other major social systems had been critically taken into account. Moreover, the scrutiny of corporate governance systems and the corporate sector should be placed in the context of China's entire economic development, when the transitional nature of China's economy claimed particular attention.

I. THE CONCEPT AND NATURE OF THE COMPANY

To understand corporate governance in China, it is useful to first review aspects of the conceptual underpinnings of the corporate governance debate and theoretical models of the corporation that it has produced.

As early as 1932, Adolf Berle and Gardiner Means had envisaged that the separation of control and management together with dispersed ownership would give more discretion to professional managers, and the power of shareholders would accordingly be eroded to a certain degree.¹⁸¹ By inference, the likelihood was that the management would deviate from their original objective, which was to maximise

¹⁸⁰ Bebchuk, Lucian A. & Roe, Mark J., "A Theory of Path Dependence in Corporate Ownership and Governance", *Stanford Law Review*, Vol. 52, No. 1, 1999, p. 127; Licht, Amir N., "The Mother of All Path Dependencies: Toward a Cross-Cultural Theory of Corporate Governance Systems", *Delaware Journal of Corporate Law*, Vol. 26, No. 1, 2001, p. 147.

¹⁸¹ Berle, Adolf A. and Means, Gardiner C., *The Modern Corporation and Private Property*, Transaction Publishers, New Brunswick, 1991, p. 66, p. 121, p. 250.

profits for the company. It was further surmised that a modern company would play a more significant role in the entire society rather than merely being a private business entity, and that the rapid evolution of the company had wider implications for the economic, political and social circumstances in modern society.¹⁸² Moreover, the accumulation of social wealth would gradually exist through the form of ownership of stock shares, while the traditional emphasis on physical property was disintegrating to some extent. Company stock was distinct from the property of a business as it represented a claim on a proportional share of the company's assets and profits in the event of a winding up.

In fact, the issue associated with the separation of ownership from control had already been mentioned in the work of Adam Smith in the nineteenth-century, and its importance was highlighted after the Great Depression of the late 1920s and early 1930s in the U.S. The agency theory advanced by Berle and Means was premised on the assumption that the vast majority of public companies had a diffused ownership, and hence the individual shareholder (the principal) did not have enough incentive to control the management (the agent). When power shifted towards management, some of that power would probably be abused. When the managers were not accountable to shareholders, the interests of the whole company would be harmed. Furthermore, it would also represent a serious hazard to the wider public when the scale of an enterprise was considerable, since management lacked accountability to

¹⁸² Berle, Adolf A., *The Twentieth Century Capitalist Revolution*, Macmillan, London, 1955, p. 166.

society in general.¹⁸³

Actually, there was an on-going corporate governance debate between Merrick Dodd and Adolf Berle from the early 1930s to the late 1960s. According to the corporate realist model advocated by Dodd, the company was a real person having a separate personality from its shareholders.¹⁸⁴ Inasmuch as the company was considered as an independent corporate person as well as an organ of the state, it should shoulder corresponding social responsibilities. Essentially, Dodd's model was emphasising the responsibilities of a company to societal stakeholders, and hence required directors to accommodate the interests of employees, consumers, creditors and even the aggregate community wherever possible. On the other hand, Berle argued that Dodd's formulation was quite vague and would probably spark the centralisation of power into the hands of a small number of corporate administrators.¹⁸⁵ By advocating the shareholder primacy position, Berle proposed that managers should only be accountable to shareholders, and that wealth maximisation for shareholders was the sole object of a company. Berle's theory had been seen as a form of political economy by some critics, as it integrated a theory of corporate law within a theory of social welfare maximisation.¹⁸⁶ Significantly, these historical arguments should not be interpreted outside of their original context, as they were largely policy responses

¹⁸³ Mizruchi, Mark S., "Berle and Means Revisited: The Governance and Power of Large U.S. Corporations", *Theory and Society*, Vol. 33, No. 5, 2004, p. 579.

¹⁸⁴ Dodd, Edwin Merrick, "For Whom Are Corporate Managers Trustees?", *Harvard Law Review*, Vol. 45, No. 7, 1932, p. 1145.

¹⁸⁵ Berle, Adolf A., "For Whom Corporate Managers Are Trustees: A Note", *Harvard Law Review*, Vol. 45, No. 8, 1932, p. 1372.

¹⁸⁶ Bratton, William W. and Wachter, Michael L., "Shareholder Primacy's Corporatist Origins: Adolf Berle and 'The Modern Corporation'", *Journal of Corporation Law*, Vol. 34, 2008, p. 99.

to the crisis of the Great Depression. Similarly, the scrutiny of the debates of that time surrounding corporate governance and responsibility also needed to be set in the new context, which was substantially different from that of several decades ago.

Much criticism has been levelled at agency theory since its origination. When agency theory placed its locus on those companies having dispersed ownership, its theoretical scope was also quite limited. It was arguable that the issue of accountability could not always be termed as the major focus in corporate governance outside of the U.K. and U.S. When the state and banks took the position of blockholder in some companies, they could then intervene in the management actively. Moreover, the management policy was not independent of shareholders' supervision either, in most companies that were established by families. Even in the U.K. and U.S., the classic agency model had been complicated by the fact that institutional investors, such as pension funds, hedge funds and insurance companies, began to emerge as dominant players in capital markets from the 1980s.¹⁸⁷ While the short-term outlook of institutional investors largely diverged from the interests of the long-term traditional shareholders, directors had to determine which interests should be higher on the list of priorities. It seems that the traditional role of management underwent a transformation during this process.

The focus of agency theory was the correlation between the corporate governance

¹⁸⁷ Bainbridge, Stephen M., "Shareholder Activism and Institutional Investors", *UCLA School of Law, Law and Economics Research Paper Series No. 05-20*, September 2005, available at SSRN: <http://ssrn.com/abstract=796227>, accessed January 10, 2011.

structure and the performance of a company, and much scholarship had been accomplished to test whether there was a causal linkage between these two ideas.¹⁸⁸ It was ordinarily believed that the generality of conclusions obtained from contemporary research was not quite compelling, since different scholars could draw substantially varied outcomes from the very same data. Besides, it was widely perceived that measures of the quality of corporate governance employed by practice and scholarship were inconclusive and inconsistent. As corporate governance was an intricate network of loyalties and relationships, the most effective governance institutions actually depended on context, and on a company's specific circumstances.¹⁸⁹ Some scholars argued that the attributes of corporate governance could not be examined only by reference to quantitative measures, as board level activities were under the influence of various factors, such as inter-personal relations between directors as well as political factors.¹⁹⁰ Conversely, some critics gradually began to harbour doubts about the philosophical underpinnings of agency theory. As the theory assumed that all individuals were self-interested with bounded rationality,¹⁹¹ agents would use their decision-making authority to maximise their personal welfare by satisfying their personal desires, in conflict with the goals of their principal. Nevertheless, it was argued that self-interested behaviour was not the

¹⁸⁸ Heracleous, Loizos, "What is the Impact of Corporate Governance on Organisational Performance?", *Corporate Governance: An International Review*, Vol. 9, Issue 3, 2001, p. 165.

¹⁸⁹ Bhagat, Sanjai; Bolton, Brian J. and Romano, Roberta, "The Promise and Peril of Corporate Governance Indices", *Columbia Law Review*, Vol. 108, No. 8, 2008, p. 1806.

¹⁹⁰ Westphal, James D. and Stern, Ithai, "The Other Pathway to the Boardroom: How Interpersonal Influence Behavior can Substitute for Elite Credentials and Demographic Majority Status in Gaining Access to Board Appointments", *Administrative Science Quarterly*, Vol. 51, Issue 2, 2006, p. 169; See also Roe, Mark J., *Political Determinants of Corporate Governance*, Oxford University Press, Oxford, 2002.

¹⁹¹ Eisenhardt, Kathleen M., "Agency Theory: An Assessment and Review", *The Academy of Management Review*, Vol. 14, No. 1, 1989, p. 58.

essence of organisations, and asymmetric distribution of power in bureaucracies would structurally encourage exploitation.¹⁹² When agency theory was attempting to define relationships in governance by means of simplistic abstract contracts between parties, it was only natural to highlight the issue of moral hazard.

One of the major positive contributions made by agency theory was the treatment of information as a purchasable commodity bearing a cost.¹⁹³ As the top executive of a company generally knew more about the operation of that company than the shareholders, shareholders were compelled to effectively ensure that the executive was taking actions in a well-conceived manner, so as to align the interests of the executive with those of shareholders. When the strategic role of the information system had been highlighted, the underlying implication was that shareholders could make a reasonable investment in the information system so as to acquire sufficient knowledge concerning the operation of the company. Thereby organisations incurred “agency costs” when treating the difficulties that arose under conditions of information asymmetry between principals and agents. An inevitable extension of the issues arising from asymmetric information was executive compensation policy. A considerable number of scholars held that the link between top executive compensation and organisational performance was quite weak,¹⁹⁴ and some statistical analyses even suggested that performance-contingent pay might be an

¹⁹² Band, David, “Corporate Governance: Why Agency Theory is Not Enough”, *European Management Journal*, Vol. 10, Issue 4, 1992, p. 459.

¹⁹³ Eisenhardt, Kathleen M., “Agency Theory: An Assessment and Review”, *The Academy of Management Review*, Vol. 14, No. 1, 1989, p. 64.

¹⁹⁴ Ungson, Gerardo Rivera and Steers, Richard M., “Motivation and Politics in Executive Compensation”, *The Academy of Management Review*, Vol. 9, No. 2, 1984, p. 314.

inappropriate means of improving organisational performance.¹⁹⁵ With the board of directors arguably an effective monitoring device for the interests of shareholders,¹⁹⁶ executive pay arrangements were more likely based on the behaviour of executives since shareholders could obtain substantial information from their boards. In fact, organisations would devise different strategies of executive compensation when facing similar conditions, as the eligibility of the same long-term incentive arrangement was questionable in changed environments. According to recent empirical research, it seemed that executive compensation practices in a certain number of major public companies were still seriously flawed where the executives' incentives had been distorted by inflated and concealed pay that was unrelated to performance.¹⁹⁷ Moreover, the value of the retirement packages given to executives was also not definite.

Although agency theory was still open to dispute, it, together with these theories dealing with it has remained in the mainstream of published literature surrounding corporate governance over recent decades. As agency theory was a branch of financial economics and political science that directed at ubiquitous conflicts of interest between people with different interests in the same assets, its application to the legal circumstances of the company had made positive contributions to

¹⁹⁵ Pearce, Jone L.; Stevenson, William B. and Perry, James L., "Managerial Compensation Based on Organizational Performance: A Time Series Analysis of the Effects of Merit Pay", *The Academy of Management Journal*, Vol. 28, No. 2, 1985, p. 262.

¹⁹⁶ Fama, Eugene F. and Jensen, Michael C., "Separation of Ownership and Control", *Journal of Law and Economics*, Vol. 26, No. 2, 1983, p. 301.

¹⁹⁷ Bebchuk, Lucian A. and Fried, Jesse M., "Executive Compensation at Fannie Mae: A Case Study of Perverse Incentives, Nonperformance Pay, and Camouflage", *Journal of Corporation Law*, Vol. 30, No. 4, 2005, p. 822.

organisational thinking. It had actually imposed far-reaching implications over research on corporate governance since its origination.

Being a major counterbalance to agency theory, stewardship theory was developed by Lex Donaldson and James H. Davis in the early 1990s.¹⁹⁸ In essence, the key assumption of stewardship theory was a radical departure from the philosophical foundation of agency theory, since the inherent concept of the former believed that shareholders should put their trust in management. Interestingly, stewardship theory had an unintended overlap with stakeholder theory concerning the wider responsibility of directors, as both theories held that the interests of creditors, employees and other stakeholders should be considered by the management. Nevertheless, stewardship theorists did not recognise the capital structure as the driver of management.¹⁹⁹ It was argued that managerial behaviour was determined largely by the characteristics of the very job and position that managers were holding.²⁰⁰ Hence, an idealised view of managerial behaviour had been adopted by stewardship theory, in which the strong desire for achievement and relevant responsibility was deemed a major motivator of managerial performance.²⁰¹ Some scholars even commented that the sense of common humanity played a positive role in influencing managerial behaviour, since some desirable characteristics such as

¹⁹⁸ Donaldson, Lex and Davis, James H., "Stewardship Theory or Agency Theory: CEO Governance and Shareholder Returns", *Australian Journal of Management*, Vol. 16, No. 1, 1991, p. 49; Donaldson, Lex and Davis, James H., "The Need for Theoretical Coherence and Intellectual Rigour in Corporate Governance Research: Reply to Critics of Donaldson and Davis", *Australian Journal of Management*, Vol. 18, Issue 2, 1993, p. 213.

¹⁹⁹ Donaldson, Lex and Davis, James H., "The Need for Theoretical Coherence and Intellectual Rigour in Corporate Governance Research: Reply to Critics of Donaldson and Davis", *Australian Journal of Management*, Vol. 18, Issue 2, 1993, p. 215.

²⁰⁰ Argyris, Chris, *Integrating the Individual and the Organization*, Transaction Publishers, Piscataway, 2009, p. 3.

²⁰¹ McClelland, David C., *The Achieving Society*, Free Press, New York, 1999, p. 1.

loyalty and honour were intrinsic to the nature of the human being.²⁰² This split between stewardship theory and agency theory had been defined as the difference between the economic and socio-psychological models of man.²⁰³ By the implications of stewardship theory, corporate governance structures should grant enough discretion to top management so as to facilitate their organisational functions, while they would be regarded as stewards. It was further argued that the widespread practice of separating the roles of chair and CEO would lower industrial performance.²⁰⁴

While stewardship theory was actually reflecting the basic legal perspective of the corporation's legislation, it seemed that it should have had an inbuilt advantage over other corporate governance counterparts. However, some critics had also challenged the validity of stewardship theory. It was pointed out that such normative models rooted in the social setting of the nineteenth-century would not function effectively in modern companies. Moreover, the principals had to assume more risks under the stewardship governance mechanism when obtaining the given advantages. From this perspective, the agency relationship could be considered as a necessary sacrifice for aligning the behaviour of the executive with the interests of the principal.²⁰⁵

²⁰² Etzioni, Amitai, *A Comparative Analysis of Complex Organizations*, Free Press, New York, 1975, p. 3.

²⁰³ Donaldson, Lex and Davis, James H., "The Need for Theoretical Coherence and Intellectual Rigour in Corporate Governance Research: Reply to Critics of Donaldson and Davis", *Australian Journal of Management*, Vol. 18, Issue 2, 1993, p. 216.

²⁰⁴ Donaldson, Lex and Davis, James H., "Stewardship Theory or Agency Theory: CEO Governance and Shareholder Returns", *Australian Journal of Management*, Vol. 16, No. 1, 1991, p. 61; Fox, Mark A. and Hamilton, Robert T., "Ownership and Diversification: Agency Theory or Stewardship Theory", *Journal of Management Studies*, Vol. 31, Issue 1, 1994, p. 69.

²⁰⁵ Davis, James H.; Schoorman, F. David and Donaldson, Lex, "Toward a Stewardship Theory of Management", *Academy of Management Review*, Vol. 22, No. 1, 1997, p. 26.

Scholars had also carried out extensive empirical research in order to confirm the association between the executive-chaired board structure and higher industrial performance, but no conclusive evidence had been procured.²⁰⁶ Being an alternative agency theory, stewardship theory essentially relied on the philosophy of involvement-oriented management and the trust between the principal and executive.²⁰⁷ In fact, it was doubtful that either the stewardship theory or agency model would be the most desirable option to corporate governance, as the principal could regularly weigh the benefits of the governance structure against the risks involved, and alter accordingly the management strategy.

Inspired by the theoretical insights of agency theory, Ronald Coase further probed the nature of the company and reached some tentative perceptions, which considered minimising transaction costs as the foundation for the existence of the company.²⁰⁸ Furthermore, it was argued that the transaction costs could be saved by undertaking activities within the organisation, as the major function of a company was obtaining merchandise and services at a competitive price independently, rather than resolving it externally. According to the further account of Williamson, the efficacy of governance forms chosen by large corporate groups could be assessed by an examination of the relevant decision-making processes and associated costs.²⁰⁹ As

²⁰⁶ Finkelstein, Sydney and D'Aveni, Richard A., "CEO Duality as a Double-Edged Sword: How Boards of Directors Balance Entrenchment Avoidance and Unity of Command", *The Academy of Management Journal*, Vol. 37, No. 5, 1994, p. 1079; Molz, Rick, "Managerial Domination of Boards of Directors and Financial Performance", *Journal of Business Research*, Vol. 16, Issue 3, 1988, p. 235.

²⁰⁷ Mayer, Roger C.; Davis, James H. and Schoorman, F. David, "An Integrative Model of Organizational Trust", *The Academy of Management Review*, Vol. 20, No. 3, 1995, p. 712.

²⁰⁸ Coase, Ronald, "The Nature of the Firm", *Economica*, Vol. 4, Issue 16, 1937, p. 386.

²⁰⁹ Williamson, Oliver E., "The Logic of Economic Organization", *Journal of Law, Economics, & Organization*, Vol.

economic efficiency was the first consideration in transaction cost economics, these “comparative institutional exercises” would help to overcome the disadvantages of scale.²¹⁰ When governance structures and mechanisms together with the cost of enforcement were the main focus of transaction cost theory, the primacy of markets had also been underlined. It seems that managerial discretion was a common concern of transaction cost economics and agency theories, as both believed that directors were given to opportunism and moral hazard, and that the management always operated under bounded rationality.²¹¹ Arguably, the resources in a free-market economy should be allocated efficiently without the intervention of any authority, and the major contribution of Coase was in identifying the costs of using market equilibrium forces. When firms could alleviate such transaction costs by substituting the price mechanism with the exercise of authority, corporate governance was merely research into how this authority was allocated and exercised.²¹²

Some critics attempted to further elaborate on the basis of Coase’s transaction cost theory, and the nexus of contracts theory advanced by Alchian and Demsetz describing the firm as a set of contracts with no hierarchy.²¹³ By this argument, almost every party in the firm had equal power to renegotiate over the contract, and equilibrium outcome could be achieved at last. The theory of the firm as a nexus of

4, No. 1, 1988, p. 88.

²¹⁰ Williamson, Oliver E., “Transaction Cost Economics: How it Works; Where it is Headed”, *De Economist*, Vol. 146, No. 1, 1998, p. 53.

²¹¹ Stiles, Philip and Taylor, Bernard, *Boards at Work: How Directors View Their Roles and Responsibilities*, Oxford University Press, Oxford, 2001, p. 4.

²¹² Zingales, Luigi, “In Search of New Foundations”, *The Journal of Finance*, Vol. 55, Issue 4, 2000, p. 1623.

²¹³ Alchian, Armen A. and Demsetz, Harold, “Production, Information Costs, and Economic Organization”, *The American Economic Review*, Vol. 62, No. 5, 1972, p. 777.

contracts was further developed by several other scholars, most of whom generally strived to provide a theoretical model of the firm through a variety of contractual and economic perspectives. For instance, Jensen and Meckling argued that specialised factors of production generated transaction costs, and that these transaction costs could be minimised by the contractual designs.²¹⁴

This literature proposed all manner of hypotheses and theories to explain why the firm could exist as an independent entity. Moreover, the divergence of interests between the firm's participants and resultant social efficiency issues was another major concern. As economic theories tried to deal with corporate governance from a different perspective, they exerted some influence on corporate legal scholarship in certain respects.

A big growth area in corporate governance debates of recent years has been in relation to stakeholder theory. The stakeholder model attempted to solve the issue of corporate governance from a societal perspective while advancing the significance of corporate social responsibility and sustainability. By the supposition of stakeholder philosophies, the company could be deemed as a set of multilateral arrangements between internal stakeholders (employees, managers, owners) and external constituencies (customers, suppliers and the community).²¹⁵ As there was a growing

²¹⁴ Jensen, Michael C. and Meckling, William H., "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure", *Journal of Financial Economics*, Vol. 3, No. 4, 1976, p. 305.

²¹⁵ Blair, Margaret M., *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century*, Brookings Institution Press, Washington D.C., 1995, p. 323.

belief that the behaviour of large economic entities would affect the interests of a wide range of stakeholders, stakeholder advocates envisaged that the executive should be held accountable to all those affected by their decisions. It was further argued that equity, efficiency and self-governance in the private sector could be improved to a great extent when the broader cybernetic stakeholder governance was adopted. Meanwhile, stakeholder participation could also provide competitive advantages for companies.²¹⁶ On the other hand, some critics had expressed concern about the potential conflicts and incompatibility occasioned by the misguided usage of stakeholder theory. It was believed that government intervention could be rationalised by the stakeholding governance architecture, when private property and executive accountability were undermined.²¹⁷ The stakeholder approach could not necessarily provide better corporate governance or industrial performance, but its usage would involve uncertain risk.

In fact, the divergence between agency theory and stakeholders philosophy was not a new issue, and had been widely discussed as early as the 1930s. What was at issue was whether the corporation should serve a wider social purpose and be managed in the broader public interest, rather than being solely for the purpose of maximising shareholder returns. When a vast company or conglomerate occupied considerable valuable social resources, it was arguable that they should shoulder corresponding

²¹⁶ Turnbull, Shann, "Stakeholder Governance: A Cybernetic and Property Rights Analysis", *Corporate Governance: An International Review*, Vol. 5, Issue 1, 1997, p. 11.

²¹⁷ Sternberg, Elaine, "The Stakeholder Concept: A Mistaken Doctrine", *Foundation for Business Responsibilities, Issue Paper No. 4*, 1999, available at SSRN: <http://ssrn.com/abstract=263144>, accessed January 10, 2011.

social obligations. Therefore, some proponents of the stakeholding model described the ideal corporate goal as maximising the wealth producing capacity of the enterprise.²¹⁸ With the emergence of sophisticated equity markets and dispersed share-ownership, professional executives tried to find a better route to satisfying the interests of the entire corporate constituency. Hence, no single stakeholder's interest should be significantly overwhelmed by any other when the company is broadly viewed as a social institution in common business practice.²¹⁹ This could also be dubbed as a distinction between the myopia of profits maximisation and the long-term profit maximisation view. When shareholder wealth and corporate resources were diverted to some activities for enhancing the well-being of the community, the shareholder could also be widely cross-fertilised by the continual improvement of general business circumstances.

To a certain degree, another major facet of the stakeholder model had been neglected by a considerable number of scholars as it was rather difficult to determine a reasonable scheme for executives to enforce the company's wider social responsibilities. If the executive were accountable to no one, it would be almost impossible to have the company function efficiently. However, publicly traded companies had increasingly employed the stakeholder approach so as to facilitate their long-term profitability. Moreover, stakeholding could be interpreted in several

²¹⁸ Drucker, Peter F., "Reckoning with the Pension Fund Revolution", *Harvard Business Review*, Vol. 69, Issue 2, 1991, p. 112.

²¹⁹ Allen, William T., "Our Schizophrenic Conception of the Business Corporation", *Cardozo Law Review*, Vol. 14, 1992, p. 261.

different ways in various countries, as the social context and political conditions were substantially dissimilar.

It is now appropriate to turn to examine how these corporate governance ideas have been applied or developed in China.

II. THE CORPORATE GOVERNANCE OF CHINESE COMPANIES

In Mainland China, there was no apparent consensus on the concept of the “company” until the early 1980s. Following a long period of confusion and disorder, the definition of a “legal person” was formally incorporated into The General Principles of the Civil Law of the People’s Republic of China in 1987 (Article 36).²²⁰ According to Article 41 of the Civil Law, “an enterprise under ownership by the whole people” (SOEs) or enterprises with collective-ownership can be qualified as a legal person when they have sufficient funds, articles of association and premises. This stipulation provided a preliminary framework for the corporatisation of SOEs. By 1993, the government was determined to accelerate corporatisation for SOEs after a long period of reflection. One year later, the long overdue Company Law of China²²¹ officially brought the foundation of limited liability companies and joint

²²⁰ People’s Republic of China, *The General Principles of the Civil Law of the People’s Republic of China* (1986 Order No.37 of the President of the People’s Republic of China), adopted at the 4th Session of the 6th National People’s Congress of the People’s Republic of China on April 12, 1986, and effective as of January 1, 1987, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=1165>, accessed October 3, 2011.

²²¹ People’s Republic of China, *Company Law of the People’s Republic of China* (1993 Order No.16 of the President of the People’s Republic of China), adopted at the 5th Session of the Standing Committee of the 8th National People’s Congress on December 29, 1993, and effective as of July 1, 1994, available at: <http://www.lawinfochina.com/display.aspx?id=641&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%BB>

stock companies as legal persons onto the statute book. In the years 2004 and 2005, China's legislative body successively promulgated two revisions of the Company Law in the light of steady progress of economic development.

With the rigidity of the old Company Law having seriously impeded economic growth, a certain amount of flexibility was incorporated into the new system by the 2005 revision, while some other significant changes were also introduced to corporate practice.

As the minimum capital requirements for establishing new companies had been largely reduced,²²² more investors could operate their businesses by means of an independent legal entity with limited liabilities. In fact, the legal limits on capital had never imposed an obstruction on the process of corporatisation for SOEs, since essential subsidies would be provided for the reformation in which the government predominated.

With the availability of a single shareholder limited liability company in the new 2005 Company Law, investors could form an entity with the simplified corporate structure of only one shareholder. However, it seems that SOEs and wealthy

[%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8](#), accessed September 22, 2012.

²²² People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 26, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

investors would not engage with this facilitation, as it posed risks for the shareholder to shoulder the joint liability of the firm's debts.²²³

Besides, the transparency issue of company information was clarified in the new law and hence the creditors or even the public had the right to obtain certain essential information about the company. Moreover, further protection was also provided for shareholders by making the information regarding financial records and tax reports accessible, while maintaining that the request for information disclosure should not impair the firm's interests.²²⁴ These mandatory provisions for information release would place directors and management under necessary supervision, as there was always an incentive for senior management to operate the firm for their own interests.

Moreover, the doctrine of piercing the corporate veil had been introduced by the new Company Law so as to protect the interests of the entire company as well as third parties. When obtaining the protection of limited liability through the independent legal person character of the company, it was not beyond the realms of possibility that shareholders would abuse the advantages of the limited liability company. Now,

²²³ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 64, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

²²⁴ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 34, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

the shareholder had to take personal liability to the injured party if the corporate formality was not observed.²²⁵ In China, this rule would be useful to prevent shareholders from escaping their own liability in most cases.

Apart from these improvements, the new Company Law also placed further limitation on loans and security arrangements to third parties, as these corporate practices were often abused by senior management and blockholders for their own benefit. The new Company Law also placed much emphasis on the legal remedies of the shareholder's legitimate interests, since these interests were always jeopardised by the self-interested misconduct of directors and senior management.

Significantly, China's government suggested several major reforms during the revision of the old Company Law, and a number of important changes were introduced via the new Company Law with the intention of improving China's lamentable corporate governance regime.

Article 104 of the new Company Law²²⁶ prescribed that each share held by the shareholders vested them one vote in the general shareholders' meetings. In addition, Article 4 ensured that the shareholders enjoyed the right to share in the benefits of

²²⁵ Bainbridge, Stephen M., "Abolishing Veil Piercing", *The Journal of Corporation Law*, Vol. 26, No. 3, 2001, p. 470.

²²⁶ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 104, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed October 21, 2013.

the company's assets. Article 38 held that shareholders should exercise their right to vote on fundamental corporate changes. Besides, Chapter 5 (Section 2) of the new law offered a clear definition for the transfer of shares from joint stock companies, with these provisions asserting that the shareholders of a listed company had the statutory right to transfer their shares through the automatic bidding system and block-trading provided by the stock exchanges. These provisions ensured that the stronger legal safeguards for basic shareholder rights were placed centre stage as a result of the revision of the Company Law.

There was a lack of adequate protection for minority shareholders in the old Company Law, and the new law aspired to provide greater means of legal remedy for such shareholders. Article 102 of the new law stipulated that if the board of directors or supervisory board could not convene a shareholders' general meeting, the shareholders who individually or aggregately had held 10 per cent of the company's shares for more than 90 consecutive days had the right to convene such a shareholders' general meeting. Moreover, the new law attempted to offer an additional tier of protection for minority shareholders by introducing a cumulative voting method. Unfortunately, very few Chinese listed companies adopted this cumulative voting system, as its provision was not mandatory.

Strict regulations governing related-party transactions were also laid down in the new Company Law. With Article 116 providing that a joint-stock company should

not directly or indirectly lend money to its directors, supervisors or senior executives, the directors and executives of such a joint-stock company were debarred from sealing a contract with the company itself by Article 149, unless such a contract had been approved by the general shareholders' meeting. Furthermore, Article 117 of the new law stipulated that the remuneration of the directors, supervisors and executives of a joint-stock company should be periodically disclosed, and that such remuneration should be determined by the general shareholders' meeting.²²⁷ These provisions provided a framework for treating all shareholders equitably, with safeguarding the interests of minority shareholders being considered of primary importance.

As accurate and timely information disclosure of listed companies correlates with investor confidence, the new Company Law introduced new regulations (Article 146) which clearly specified that listed companies were subject to certain reporting requirements. The onus was on China's listed companies to communicate relevant information to their shareholders and investors through annual, half yearly and quarterly reports, while Article 165 of the new Company Law provided that listed companies should formulate financial reports at the end of each fiscal year, with a requirement for these financial reports to be audited by a chartered auditor. Technically, Article 124 stated officially that the main burden of handling

²²⁷ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 100, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed October 23, 2013.

information disclosure fell to the secretariat of the board of directors.

The board of directors and supervisory board were the primary bodies responsible for the corporate governance of joint-stock companies in China's two-tier board system. Article 109 of the new Company Law stipulated that each joint-stock company must have a board of directors composed of five to nineteen members. In addition, Article 100 provided that the general shareholder's meeting of a joint-stock company was entitled to elect or remove members from the board of directors and supervisory board. However, the new Company Law did not contain clear specifications regarding the procedures for appointment and election of directors and supervisors, as only those shareholders who held more than 3 per cent of the total share volume (either individually or jointly) could exercise the authority to propose nominees for vacant director and supervisor positions. Besides, the employees' representative might sit on the board of directors, to which the former could be democratically elected by the employee representative congress or employee congress.

Hiring and dismissing managers was one of the major statutory duties carried out by the board of directors in a joint-stock company, according to Article 114, while deciding on manager remuneration and the employment of other senior managerial staffers were also within the remit of the board of directors. Significantly, Article 147 gave a clear definition of the qualification requirements for directors, supervisors

and executives by clarifying which types of individuals were prohibited from appointment to such positions in joint-stock companies. Furthermore, Article 149 stipulated that directors of joint-stock companies were under obligation to remain loyal to the company, and therefore should not commit any wrongdoing while fulfilling their duties. Compared with the old Company Law, the duties and functions of the supervisory board had been considerably strengthened in the new law, as it was afforded a more positive monitoring role. According to Article 118 of the new law, the supervisory board of a joint-stock company should be comprised of no less than three members, with employee representatives filling at least one-third of these seats.

With stakeholder interest and corporate social responsibility gaining increasing importance in China, its government decided to phase in new regulations to protect stakeholder interest whilst requesting that large companies undertake certain forms of corporate social responsibility. To support this, Article 18 of the new law sustained that employees could organise labour unions to facilitate collective bargaining over their welfare. Article 20 introduced the doctrine of piercing the corporate veil, with one major intention of this article being to safeguard the interests of creditors. Unfortunately, Mr J (Interviewee No.10) attached little importance to these provisions regarding stakeholders and corporate social responsibility, as he argued that the ambiguities of such provisions inexorably led to the reality that they rarely seems to be applied in practice.

It is arguable that the new Company Law injected new changes into the practice and management of China's companies, as more affairs were left to the discretion of the company itself, while the importance of the articles of association had also been highlighted by some legislative provisions.²²⁸ Indeed, the new Company Law improved corporate governance in China to a certain degree. Nevertheless, these tangible improvements did not meet expectations since enforceability was always a concern in China's judicial system. Moreover, the new law may also have provided grounds for judicial officials to interfere in a company's internal affairs, since judicial remedies would play a more important role under the new law.²²⁹

According to the classic theory of capital markets, stock markets could be classified into two general types: the Anglo-American style and the continental Europe style.²³⁰ As the structures of ownership of Anglo-American listed companies were substantially different from those of their continental model counterparts, to a certain extent the Anglo-American style stock market also performed a dissimilar function compared with continental model stock markets. Traditionally, the typical Anglo-American publicly quoted company had widely dispersed share ownership, and the substantial equity of most major listed companies resided with institutional

²²⁸ Dickinson, Steven M., "Introduction to the New Company Law of the People's Republic of China", *Pacific Rim Law & Policy Journal*, Vol. 16, Issue 1, 2007, p. 11.

²²⁹ Dan, "China Corporate Law - The Basics of China's Company Law", *China Law Blog*, available at: http://www.chinalawblog.com/2009/12/china_corporate_law_the_basics.html, accessed January 15, 2011.

²³⁰ Mayer, Colin, "Stock-markets, Financial Institutions, and Corporate Performance", in *Capital Markets and Corporate Governance*, Dimsdale, Nicholas and Prevezer, Martha edited, Oxford University Press, Oxford, 1994, p. 188.

investors.²³¹ In contrast, the property rights of the vast majority of quoted companies in continental countries were mostly concentrated in a handful of investors, including families, companies and other institutions. As the directors in the Anglo-American corporate governance system were seen to have an obligation to maximize shareholder value, profit-oriented behaviour was generally considered as an essential means to enhance corporate efficiency.²³² In contrast, the interest of shareholders was arguably subordinated to the collective interest of the whole company in continental countries. Besides, a one-tier board structure had been widely adopted in Anglo-American companies, where executive directors as well as non-executive directors formed one board. Apparently, the two-tier board system was a strong preference for continental countries, in which the management board and supervisory responsibility were clearly separated.²³³

Stock exchanges played an important role in corporate finance in Anglo-American countries, while their capacity was largely reduced in the continental mechanism. While the policy of dividend payment highly valued in the Anglo-American governance system, this was less prioritised on the Continent since the ownership of cross-shareholdings was common practice there. Under the continental governance mechanism, publicly held companies often owned a significant percentage of each

²³¹ Cheffins, Brian R., *Corporate Ownership and Control: British Business Transformed*, Oxford University Press, Oxford, 2008.

²³² The Committee on the Financial Aspects of Corporate Governance and Gee and Co. Ltd., *Financial Aspects of Corporate Governance (Cadbury Report)*, 1992.

²³³ Rhodes, Martin and Apeldoorn, Bastiaan Van, "Capitalism versus Capitalism in Western Europe", in *Developments in Western European Politics*, Rhodes, Martin; Heywood, Paul M. and Wright, Vincent (edited), Palgrave Macmillan, Basingstoke, 1997, p. 174.

other's equity, and financial institutions such as banks were also major shareholders. As a general rule, non-bank financial institutions, such as pension funds and life insurance firms, could exert more substantial control over corporate activities in the Anglo-American system, when large corporate groupings created by complex inter-linkages of equity ownership were generally represented on each other's boards on the Continent.²³⁴

Some scholars have organised the variables of corporate governance mechanism into two main types: capital-related and labour-related,²³⁵ with the capital-related aspects comprising variables such as ownership structure, corporate voting and the role of institutional owners. It was generally believed that the capital-related attributes of Anglo-American countries were desirable when their capital markets were well developed. It was further argued that the presence of large investors was not the only variable that generated concentration of control in continental companies, since the smaller shareholdings were not "appreciably" smaller than the largest ones in the U.K. and U.S. Furthermore, the presence of significant shareholdings by smaller investors had actually enabled the effective control by coalitions rather than by individual shareholders.²³⁶ As the share ownership structure of the Anglo-American corporate governance system was widely dispersed, it was felt that small individual

²³⁴ Mayer, Colin, "Stock-markets, Financial Institutions, and Corporate Performance", in *Capital Markets and Corporate Governance*, Dimsdale, Nicholas and Prevezer, Martha edited, Oxford University Press, Oxford, 1994, p. 188.

²³⁵ Cernat, Lucian, "The Emerging European Corporate Governance Model: Anglo-Saxon, Continental, or Still the Century of Diversity?", *Journal of European Public Policy*, Vol. 11, Issue 1, 2004, p. 149.

²³⁶ Becht, Marco and Mayer, Colin, "The Control of Corporate Europe", in *The Control of Corporate Europe*, Barca, Fabrizio and Becht, Marco edited, Oxford University Press, Oxford, 2002, p. 37.

shareholders should be placed under extra protection, since they could exert little control or influence over the management. To a certain degree, the strict regulation of the stock market and harsh penalty measures against corporate activities in the Anglo-American system were well suited to its ownership structure when balancing the interests of majority shareholders and those of the minority shareholders. Hence small shareholders could trade their shares freely since their rights were safeguarded by the stringent rules of information disclosure, insider trading and takeovers.

With the bank playing a major role both in corporate finance and control in the continental system, its importance had been minimised in the corporate ownership structure in Anglo-American countries. In contrast, some non-bank financial institutions, such as pension funds and life insurance companies, gradually gained substantial control over the corporate sector in the U.K. and U.S. Takeover mechanisms, meanwhile, had been employed as a main correctional measure for managerial failure, as well as an inducement to corporate efficiency in the Anglo-American system, when its role was restricted to a certain degree on the Continent.²³⁷ While large shareholders had due incentives to be involved in the monitoring of the corporate activities of publicly listed companies, dispersed outsiders had little incentive for this. As dispersed investors did not exert direct control over corporate activities, takeovers could help these outsiders to substitute conservative or ineffectual management so as to achieve the maximisation of

²³⁷ Shleifer, Andrei and Vishny, Robert W., "Large Shareholders and Corporate Control", *The Journal of Political Economy*, Vol. 94, No. 3, Part 1, 1986, p. 461.

benefits.

According to some earlier observations, quoted companies outperformed their unquoted matched counterparts in terms of capital return rates, growth rates, productivity and profitability.²³⁸ Arguably, this could imply that companies achieved better performance with the benefits of stock markets. Enabling outside individual investors and companies to purchase the ownership of quoted companies, stock markets also offered a much greater degree of flexibility for existing shareholders to trade in their property rights. In essence, the introduction of publicly-traded equity claims together with external markets allowed corporate control through mergers and takeovers. Meanwhile, this outsider-based corporate financial structure also facilitated hostile takeovers. Moreover, companies also had to bear the high cost of these outside equity financing activities since signalling to outside investors was expensive.²³⁹

It is generally believed that there was a close relationship between corporate governance arrangements and corporate performance. With the rapidly growing economy, the development of a viable corporate governance system was becoming of primary importance to China's corporate sector reforms. Particularly, improving the performance of SOEs and other major public companies through institutional

²³⁸ Mayer, Colin and Alexander, Ian, "Stock Markets and Corporate Performance: A Comparison of Quoted and Unquoted Firms", *Centre for Economic Policy Research Discussion Paper No. 571*, available at: <http://www.cepr.org/pubs/dps/DP571.asp>, accessed October 4, 2011.

²³⁹ Feltovich, Nick J.; Harbaugh, Rick and To, Ted, "Too Cool for School? Signalling and Countersignalling", *RAND Journal of Economics*, Vol. 33, No. 4, 2002, p. 630.

changes would have certain political and social significance in Mainland China, as it could enhance the country's economic growth.

As argued in Proposition 1, there was a reasonable prospect that China's corporate governance patterns would reflect insider control system patterns, generally. In fact, some observers had already looked with favour upon this proposition.²⁴⁰ Ironically, it seems that some of China's guiding policies on corporate governance actually mirrored the principles of the stylised Anglo-American model based on external markets. However, the quintessence of the Anglo-American model was largely ignored by this prescriptive approach to corporate sector reform as it was only a replication of the Anglo-American stylised corporate governance structure, whereas the related conditions and institutions that made such a governance model functional had been disregarded to the utmost degree.²⁴¹

After the Great Depression of the 1930s, the Anglo-American corporate governance model was gradually shaped during the development of the capital markets. Furthermore, it was widely believed that the paramount component for the effective functioning of this model was a competitive external market for corporate control, which had also been termed as the "takeover market".²⁴² The takeover mechanism was generally considered as an effective means of having inefficient management

²⁴⁰ Tam, On Kit, "Chinese Corporate Governance", *Reform (Gai-Ge)*, Issue 1, p. 46.

²⁴¹ Tam, On Kit, "Models of Corporate Governance for Chinese Companies", *Corporate Governance: An International Review*, Vol. 8, No. 1, 2000, p. 53.

²⁴² Weimer, Jeroen and Pape, Joost C., "A Taxonomy of Systems of Corporate Governance", *Corporate Governance: An International Review*, Vol. 7, Issue 2, 1999, p. 155.

replaced, which also tended to encourage a convergence of interests between the top executives and the shareholders.²⁴³ However, such an external market for corporate control did not actually exist in Mainland China.

The traditional Chinese ethical and philosophical doctrines typified by Confucianism were still considered by many commentators as a significant philosophical foundation of modern Chinese society. Particularly, those core virtues promoted by Confucianism were vital components in the corporate governance of Chinese companies.²⁴⁴ Some scholars argued that *guanxi*²⁴⁵ played a decisive role in the Confucian-oriented corporate governance, as its decision-making mechanism was highly unitary.²⁴⁶ The prevailing view appears to be that traditional Confucian virtues and doctrines would help to enhance the voluntary regulation of directors and executives, and then further improve the corporate governance of Chinese and Asian companies.²⁴⁷ By comparison, the significance of a rational mechanism such as the legal approach was better appreciated by the western corporate governance systems, which were exemplified by the continental European and Anglo-American models. It was held that western culture was pluralistic, and that the moral obligations of business had already been incorporated in the law.²⁴⁸

²⁴³ Franks, Julian and Mayer, Colin, "Capital Markets and Corporate Control: A Study of France, Germany and the UK", *Economic Policy*, Vol. 5, No. 10, 1990, p. 191.

²⁴⁴ Provasi, Roberta, *An Overview on the Evolution of the Corporate Governance in the People's Republic of China*, Giuffrè Editore, Milan, 2012, p. 24.

²⁴⁵ The term "*guanxi*" generally refers to social relations and interpersonal relationships in Chinese.

²⁴⁶ Sheh, Seow Wah, "Chinese Cultural Values and Their Implication to Chinese Management", *Singapore Management Review*, Vol. 23, Issue 2, 2001, p. 77.

²⁴⁷ Miles, Lilian and Goo, S. H., "Corporate Governance in Asian Countries: Has Confucianism Anything to Offer?", *Business and Society Review*, Vol. 118, Issue 1, 2013, p. 39.

²⁴⁸ Balachandran, V. and Chandrasekaran, V., *Corporate Governance and Social Responsibility*, PHI Learning Private Limited, New Delhi, 2009, p. 44.

It seems that the role of traditional Confucian values in the management of Chinese companies diverged to a certain extent from the obligations imposed by overseas listing. With western corporate governance models prioritising the accountability, effectiveness and transparency of the board, they often adopted a myriad of sophisticated mechanisms to ensure that the directors' interests were being aligned with those of the shareholders. As the legal and regulatory environments of western countries were generally well developed, these sophisticated mechanisms could effectively enable a supervisory role of the companies' management in most instances. Compared with their western counterparts, China's Confucian-oriented governance structures underscored the importance of paternalism, collectivism and social relationships. The Confucian-style directors and executives had a natural inclination to follow the autocratic management style in the face of consequential matters, as this could help to achieve greater fluency and efficiency. Significantly, the Confucian-oriented governance structure had convergent views with western governance models on certain issues. For instance Benevolence (*Ren*), which is a core virtue advocated by Confucianism, emphasises that there is a necessity for one to be mindful of the welfare of others. Therefore, virtue of Benevolence actually required people to deliberate on the impact of their conduct on those around them. The concept of Benevolence (*Ren*) naturally coincided with the modern stakeholder theory, and could support companies in shouldering more corporate social

responsibility.²⁴⁹

III. THE SPLIT SHARE STRUCTURE REFORM OF CHINA'S LISTED COMPANIES

By the beginning of 2000, the shares of most of China's publicly listed companies were still segmented into several different classes. Whereas the tradable A and B shares accounted for only one third of the capitalisation of all China's companies listed on the Mainland's two stock exchanges, large amount of non-tradable shares, including State Shares and Legal Person Shares, were retained by various state-controlled entities and organs.²⁵⁰ According to the official document, the term "State Shares (or State-owned Shares)" referred to shares that were retained by authorised departments or official bureaus. When these authorised organisations represented the state to invest with state funds, all State Shares were fully owned by the State Council of Mainland China. Although State Shares could not be traded openly, they could be transferred to some domestic investors with the special permission of the CSRC. Similarly, "Legal Person Shares" also ultimately belonged to the state. However, for the sake of facilitating economic growth, these Legal Person shares had been transferred to various institutions including securities companies, non-bank financial institutions and SOEs that enjoyed operational autonomy to a greater degree.²⁵¹ The Legal Person shares were originally created in

²⁴⁹ Zhu, Wenzhong and Yao, Yucheng, "On the Value of Traditional Confucian Culture And the Value of Modern Corporate Social Responsibility", *International Journal of Business and Management*, Vol. 3, No. 2, 2008, p. 61.

²⁵⁰ Liu, Guy and Sun, Pei, "China's Public Firms: How Much Privatization?", in *Exit the Dragon? Privatization and State Control in China*, Green, Stephen and Liu, Guy S. edited, Wiley-Blackwell, Malden, Massachusetts, 2005, p. 114.

²⁵¹ People's Republic of China, *Opinions on Standards for the Companies Limited by Shares* (1992 Order No.31

the 1980s so as to promote the corporatisation process of SOEs.

As the split share structure gradually became the major obstacle of China's capital market, the Chinese government committed to institute a number of radical changes to the existing system. After two pilot projects involving several listed companies, two important pieces of legislation concerning non-tradable share reform were promulgated by the CSRC, together with other authorities, in late 2005.²⁵² This marked the beginning of an overdue structural reform aiming at addressing the inveterate problems of China's domestic capital market. If the distorted price mechanism of the domestic capital market could be eliminated by the new measures, there would be some optimism that the corporate governance of China's major companies would be improved to a certain degree. Meanwhile, the prospect of a competitive market for corporate control would also be reasonable since liquidity would be enhanced.²⁵³

Through the mentioned legislation, reform was gradually extended to the vast

of the State Commission for Restructuring the Economic Systems of the People's Republic of China), Article 24, promulgated by the State Commission for Restructuring the Economic Systems of the People's Republic of China on, and effective as of May 15, 1992, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=6466>, accessed October 4, 2011.

²⁵² People's Republic of China, *Guiding Opinions of the China Securities Regulatory Commission, State-owned Assets Supervision and Administration Commission, Ministry of Finance, People's Bank of China, and the Ministry of Commerce on Share-trading Reform of Listed Companies* (2005 Order No.80 of China Securities Regulatory Commission of the People's Republic of China), promulgated and effective as of August 23, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4542>, accessed October 4, 2011; People's Republic of China, *The Measures for the Administration of the Share-trading Reform of Listed Companies* (2005 Order No.86 of China Securities Regulatory Commission of the People's Republic of China), promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of September 4, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4552>, accessed October 4, 2011.

²⁵³ Yeung, Wai Ho, "Non-Tradable Share Reform in China: Marching Towards the Berle and Means Corporation?", *Comparative Research In Law & Political Economy*, Vol. 5, No. 9, 2009, p. 12.

majority of Mainland listed companies after the pilot projects. Since most of China's companies listed on domestic stock exchanges were state-owned, the essential transformation of state-owned assets management was one of the major concerns of the reform's proposals. On the other hand, the government still aimed to retain control of most major SOEs, even after the split-share reform. For the sake of implementing the reform scheme in a reliable manner, some vital restrictive rules had been applied to the non-tradable shares. As all non-tradable shares were subject to a certain lock-up period in the reform, the shareholders were prohibiting from trading in such shares within the first 12 months, commencing from the date of the reform's implementation.²⁵⁴ Besides, it was noteworthy that the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) still had *de facto* authority over the transactions of non-tradable shares in the split share reform.

As the split share capital structure of China's stock exchanges had been regarded by many commentators as a major cause of the poor corporate governance of China's listed companies, there was a necessity to scrutinise the latest situation of split share structure reform. Technically, the kernel of the split share structure reform was the conversion of non-tradable shares into fully tradable shares. As a matter of fact, non-tradable share reform was also a restructuring process for most SOEs, with the

²⁵⁴ People's Republic of China, *The Measures for the Administration of the Share-trading Reform of Listed Companies* (2005 Order No.86 of China Securities Regulatory Commission of the People's Republic of China), Article 27, promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of September 4, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4552>, accessed October 4, 2011.

intention of maximising the interests of all shareholders.²⁵⁵ In addition, balancing the interests of tradable shares' shareholders and those of non-tradable shares' shareholders was also one of the major concerns.

At the initial stage, there was a deep ideological division over the merits and flaws of the proposed split share reform. The key issue was whether the conversion of non-tradable state shares and legal person shares would undermine the traditional state ownership system, or even set the scene for large-scale privatisation of SOEs.²⁵⁶ Moreover, the flotation of non-tradable shares also exerted pressure on political stability and stock market stability, as the state shares and legal person shares accounted for around 64 per cent of the total equity capital of all listed companies in Mainland China.²⁵⁷

In the summer of 2001, the Chinese government made an attempt to float a range of state shares so as to raise funds for social security; however, this was the point at which the initial reform was to meet its nemesis since the security markets in Shanghai and Shenzhen soon slumped by over 45 per cent.²⁵⁸ As these experiences provided a cautionary tale for the Chinese government, a much restrained gradualist

²⁵⁵ See People's Republic of China, *Opinions of the China Securities Regulatory Commission and the State-owned Assets Supervision and Administration Commission of the State Council on Performing the Work of Pilot Reform of Equity Division* (2005 Order No.41 of China Securities Regulatory Commission of the People's Republic of China), jointly issued by China Securities Regulatory Commission and the State-owned Assets Supervision and Administration Commission of the State Council of the People's Republic of China on, and effective as of May 30, 2005.

²⁵⁶ Cao, Lan, "Chinese Privatization: Between Plan and Market", *Law and Contemporary Problems*, Vol. 63, No. 4, 2000, p. 59.

²⁵⁷ Joyce, Lee Suet Lin, "From Non-Tradable to Tradable Shares: Split Share Structure Reform of China's Listed Companies", *Journal of Corporate Law Studies*, Vol. 8, No. 1, 2008, p. 65.

²⁵⁸ Gao, Sheldon, "China Stock Market in A Global Perspective", *Dow Jones Indexes*, September 2002, p. 16, available at: www.stern.nyu.edu/~jmei/b40/ChinaIndexCom.pdf, accessed April 30, 2011.

approach was taken when the Split Share Structure Reform was being put into effect in mid-2005. Thus, the reform was distributed into several stages and four companies were selected for Phase One on a trial basis. Around two months later, the Chinese government was swift to take steps so as to implement the second round of the pilot scheme which involved another 42 companies.²⁵⁹ When the results of these two phases of the pilot scheme were deemed effective, the reform moved into full operation from September 2005.

There is no certainty whether the Split Share Structure Reform will transfer China's stock market into a fully open market, since the Chinese government presumably would not loosen its control over most leading SOEs post-reform. The negotiable shares volume and the negotiable market capitalisation of A shares and B shares that listed on the Shanghai Stock Exchange (SSE) and Shenzhen Stock Exchange (SZSE) have been superficially analysed in percentage terms in Section I (b) of Chapter 2. As Table 3.1 shows, the original shares released from trading restrictions in the SSE had multiplied from 2005 to 2011. The SSE released 1,043,366 million original shares from trading restrictions in 2010, which accounted for more than 47 per cent of all issued shares. By 2011, over 76 per cent of all issued shares in the SSE were negotiable. By comparison with the SSE, the SZSE released many fewer original shares from trading restrictions during this period. According to the data represented in Table 3.1, the SZSE began to lift the trading restrictions on original shares from

²⁵⁹ Inoue, Takeshi, "Reform of China's Split-Share Structure Takes Shape", *Nomura Capital Market Review*, Vol. 8, No. 3, 2005, p. 43.

2006. In 2011, the volume of original shares released by the SZSE from trading restrictions at its height reached 43,815 million shares. Nonetheless, this figure formed only approximately 7 per cent of all the shares issued by the SZSE in the same year. These statistics may indicate that the Spilt Share Structure Reform was not far reaching enough in the case of the SZSE.

It would appear that the Spilt Share Structure Reform could further perfect the corporatisation process of China's SOEs, since their non-tradable shares would obtain the property of full tradability. However, most strategically valuable assets owned or controlled by leading Chinese SOEs were actually contributed by the central or local government. There is a sense in which the conversion of non-tradable shares into tradable shares will obscure the "state-owned" attributes of the SOEs' assets, since it would be impossible to determine whether central or local government already have the proprietary rights to these assets when any investors can purchase the shares of such SOEs on the open market.²⁶⁰ Moreover, whether this reform will lead to a massive wave of privatisation of China's SOEs is also a matter for debate.

These comments could be acceptable in theory, but they are likely to be in conflict with the prevailing attitude in Mainland China. Mr K (Informant No. 11), who studied at PhD level at China University of Science and Law, is an expert on China's

²⁶⁰ Joyce, Lee Suet Lin, "From Non-Tradable to Tradable Shares: Split Share Structure Reform of China's Listed Companies", *Journal of Corporate Law Studies*, Vol. 8, No. 1, 2008, p. 77.

economics. As mentioned in Section III (d) of Chapter 1, Mr K had been serving under Professor LIU Jipeng for many years. The special social connections of Professor LIU enabled Mr K to make the acquaintance of several senior officials of the State-owned Assets Supervision and Administration Commission (SASAC). With 117 centrally-administered state-owned enterprises (or Central-owned SOEs) in China,²⁶¹ around 35 of these SOEs had been categorised as strategically important by the SASAC. The vast majority of these SOEs operated in industrial sectors that were critical to China's national security, which included aviation, defence, oil, petrochemicals, power generation, shipping and telecommunications.²⁶² A senior official of the SASAC reported to Mr K that China's government would definitely retain majority shareholding in these strategically important SOEs after the Spilt Share Structure Reform, and that they would not adjust this policy in the foreseeable future.

The comments of this SASAC official could be confirmed by the data derived from Table 3.1. With the SSE beginning to release original shares from trading restrictions from 2006, the first lock-up period of these original shares did not expire until 2007. When 68,816 million locked-up shares became eligible to be traded on the SSE in 2007, only 19,059 million shares were redeemed, which indicated that only 27 per

²⁶¹ For a full list of these central-owned SOEs, refer to the State-owned Assets Supervision and Administration Commission of the State Council (SASAC), Full List of Central-owned State-owned Enterprises of the People's Republic of China, available at: <http://www.sasac.gov.cn/n2963340/n2971121/n4956567/4956583.html>, accessed September 10, 2012; as the Chinese government was seeking to reduce the number of Central-owned SOEs to less than 100, this list may not reflect the latest changes.

²⁶² Mattlin, Mikael, "Chinese Strategic State-Owned Enterprises and Ownership Control", *Brussels Institute of Contemporary China Studies Asia Paper*, Vol. 4, No. 6, 2009, p. 13, available at: <http://www.vub.ac.be/biccs/site/index.php?id=23>, accessed September 10, 2012.

cent of the expired locked-up shares had been redeemed by the shareholders. From 2008 to 2010, more shares came on to the SSE market as various lock-in periods ended. Nevertheless, only a very small fraction of these expired locked-up shares were redeemed. In 2008, the proportion of redeemed expired locked-in shares in comparison to the total amount redeemable was 24 per cent in the SSE. In 2009 and 2010, this percentage decreased further down into single figures, of 4 per cent and 6 per cent, respectively.

Unfortunately, the SZSE did not provide any statistics about the volume of expired locked-up shares as well as the redemption percentage of expired locked-up shares. As mentioned earlier, the SZSE released very few original shares from trading restrictions from 2005 to 2011. Thus, the number of expired locked-up shares that had been redeemed on the SZSE were likely to be fewer, with a tendency to be a much lower amount than that of the SSE. The said senior official of the SASAC indicated to Mr K that the SASAC would actually keep an indefinite tight restraint on the redemption of these expired locked-up original shares. Indeed, it would not be difficult for the SASAC to regulate the redemption of expired locked-up shares, since the majority of shareholders of these leading Chinese SOEs were government ministries or government-linked agencies. It has been suggested by some scholars that the Split Share Structure Reform could possibly improve the market liquidity of China's stock market, as the non-tradable share would be removed.²⁶³ Furthermore,

²⁶³ Wang, Margaret, "Increasing the Liquidity of Shares in Chinese Companies", in *Stock Market Liquidity: Implications for Market Microstructure and Asset Pricing*, Lhabitant, François-Serge and Gregoriou, Greg N.

it appears clear from the reports from the mentioned official of SASAC that such an objective of the reform seems unlikely, at least in the short-term.

Moreover, Mr K added that setting strict limits on the redemption of expired locked-up original shares could also help to prevent non-tradable shareholders from flooding the market with shares in a short space of time. It is widely known that the non-tradable shareholders of Chinese companies obtained the original shares at an unreasonably low price. Although these non-tradable shareholders were requested to compensate the tradable shareholders before floating their shares on the stock markets,²⁶⁴ the non-tradable shareholders still possessed the largest shareholding after the reform.

Technically, this approach for maintaining state control had already been consolidated as early as 1994, when the pilot scheme known as “grasp the large and release the small” was proposed by China’s State Council.²⁶⁵ To a certain degree, one of the major objectives of the creation of the SASAC was to supervise the

(edited), John Wiley & Sons, Hoboken, 2008, p. 307.

²⁶⁴ China’s government did not make specific stipulation about the compensation for tradable shareholders; it just requested the non-tradable shareholders to negotiate with tradable shareholders so as to assess the reasonable amount of market-based compensation. Besides, CSRC prescribed that the split share reform plan of a Chinese company should be approved by “shareholders who own at least two-thirds of tradable voting shares” at the shareholders’ meeting; See People’s Republic of China, *The Measures for the Administration of the Share-trading Reform of Listed Companies* (2005 Order No.86 of China Securities Regulatory Commission of the People’s Republic of China), Article 16, promulgated by China Securities Regulatory Commission of the People’s Republic of China on, and effective as of September 4, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4552>, accessed October 4, 2011.

²⁶⁵ This pilot industrial reform is also known as “Grasping the large, letting go of the small”, and it was initiated by China’s central government in 1994. The main objective of this pilot reform was to retain state control in largest China’s SOEs, but relinquish the control over smaller Chinese SOEs; see Yueh, Linda, *Enterprising China: Business, Economic, and Legal Developments since 1979*, Oxford University Press, Oxford, 2011, p. 111.

restructuring process of these strategically important SOEs.²⁶⁶ The SASAC reiterated the necessity of maintaining absolute government control in leading the SOEs of strategically important sectors at China's Central Economic Work Conference held in December 2006. Furthermore, the SASAC promulgated the Guiding Opinions of the SASAC about Promoting the Adjustment of State-owned Capital and the Reorganization of State-owned Enterprises in late 2006, so as to pursue this policy with determination, which indicated again that China's government would not give up a majority controlling stake in strategically important SOEs.²⁶⁷ According to the acquainted SASAC official of Mr K, it seems that China's government made no attempt to change such policy of retaining state control in leading Chinese SOEs after the Split Share Structure Reform.

With the Split Share Structure Reform mainly aimed at large Chinese SOEs, leading Chinese Central-owned SOEs are of primary importance. Almost all of these strategically important Central-owned SOEs are the largest companies in their own industries, and have also achieved dominant positions in China's stock market. These facts can suggest that the corporate governance patterns of leading Chinese companies will still reflect insider control system patterns in the future, which was proposed by Proposition 2 in Chapter 1. Besides, the information provided by Mr K

²⁶⁶ Yueh, Linda, *The Economy of China*, Edward Elgar Publishing Limited, Cheltenham, 2010, p. 56.

²⁶⁷ People's Republic of China, *Notice of the General Office of the State Council on Forwarding the Guiding Opinions of the SASAC about Promoting the Adjustment of State-owned Capital and the Reorganization of State-owned Enterprises* (2006 Order No.97 of the General Office of the State Council of the People's Republic of China), promulgated by the General Office of the State Council of the People's Republic of China on, and effective as of December 5, 2006, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=6540>, accessed September 12, 2012.

could also sustain the argument of Proposition 1, which submitted that China's stock markets largely reflect an insider control system.

Table 3.1 Statistics on the Split Share Structure Reform of Shanghai and Shenzhen Stock Exchanges 2005-2011 (volume-million)

	Year	2005	2006	2007	2008	2009	2010	2011
Shanghai Stock Exchange	Issued Shares Volume	502,305.00	1,027,954.00	1,417,310.00	1,541,039.00	1,665,996.00	2,193,951.00	2,346,665.00
	Negotiable Shares	156,121.00	225,448.00	339,930.00	491,604.00	1,157,856.00	1,603,130.00	1,799,380.00
	Original Shares Released from Trading Restrictions*	n/a	6,693.00	56,451.00	137,390.00	739,044.00	1,043,366.00	?
	Expired Locked-up Shares**	n/a	n/a	68,816.00	107,813.00	629,004.00	327,067.00	?
	Expired Locked-up Shares Redeemed	n/a	n/a	19,059.00	26,874.00	27,350.00	22,744.00	?
Shenzhen Stock Exchange	Issued Shares Volume	213,364.81	237,583.29	278,171.79	344,185.80	390,756.18	504,497.52	627,846.31
	Negotiable Shares	93,429.75	117,690.06	151,121.79	202,375.36	260,107.82	341,085.17	450,605.56
	Original Shares Released from Trading Restrictions	n/a	2,653.00	15,813.00	19,440.00	41,538.00	36,246.00	43,815.00
	Expired Locked-up Shares	n/a	?***	?	?	?	?	?
	Expired Locked-up Shares Redeemed	n/a	?***	?	?	?	?	?

Source: Shanghai Stock Exchange Fact Book 2008-2011²⁶⁸

²⁶⁸ Shanghai Stock Exchange, *Shanghai Stock Exchange Fact Book*, available at: http://www.sse.com.cn/sseportal/en_us/ps/about/fact.shtml, accessed June 15, 2012.

* The “Original Shares” refers to the shares “with a prescribed no-sale period in a company which is listed on the Shenzhen or Shanghai main board, and has completed the share-trading reform and the issued shares in a company before its IPO and listing on the Shenzhen or Shanghai main board after the policy of ‘separating the new from the old’ has been implemented.”²⁶⁹

** According to the relevant regulation, “(1) The original non-tradable shares may not be listed for trading or be transferred within twelve months as of the day when the reform scheme comes into force; and (2) Where the original holders of non-tradable shares holding 5 per cent or more of the shares of a listed company sell their original non-tradable shares through listing in a stock exchange beyond the time limit as prescribed in the preceding item, the amount of the original non-tradable shares sold may not exceed 5 per cent of the total shares of the company within twelve months and not exceed 10 per cent of the total shares of the company within twenty-four months.”²⁷⁰

*** Unfortunately, the SZSE did not provide any statistics about these items.

²⁶⁹ People’s Republic of China, *Guiding Opinions on the Listed Companies’ Transfer of Original Shares Released from Trading Restrictions* (2008 Announcement No.15 of China Securities Regulatory Commission of the People’s Republic of China), Article 1, promulgated by China Securities Regulatory Commission of the People’s Republic of China on, and effective as of April 20, 2008, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=6764>, accessed June 21, 2012.

²⁷⁰ People’s Republic of China, *The Measures for the Administration of the Share-trading Reform of Listed Companies* (2005 Order No.86 of China Securities Regulatory Commission of the People’s Republic of China), Article 27, promulgated by China Securities Regulatory Commission of the People’s Republic of China on, and effective as of September 4, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4552>, accessed October 4, 2011.

IV. SUMMARY

This chapter has reviewed the traditional concerns and theories of corporate governance, as well as the current state of Chinese companies' corporate governance. Moreover, the latest developments of China's Split Share Structure Reform have also been briefly surveyed.

As discussed in this chapter, China's SOEs, especially the Central-owned SOEs, claimed the advantage in the economic competition within Mainland China under the auspices of the Chinese government. Although Chinese private companies have been progressing rapidly in recent years, they still could not play a pivotal role in China's economy. When taking these considerations into account, it was attempted to provide a concrete analysis of the corporate governance of the major Chinese companies, with an emphasis on the current situation of China's leading SOEs.

Although Chinese authorities had given effect to SOE reform as early as 1994, the government is still playing a significant role in the corporate governance of large SOEs, especially in the strategically important Central-owned SOEs. After the adventurous Split Share Structure Reform, all non-tradable shares that included State-owned Shares and Legal Person Shares were transferred into tradable shares in principle. Nevertheless, it seems that China's government did not intend to relinquish control of the largest of China's SOEs, especially those that operated in

strategically important industrial sectors.

While some characteristics of the corporate governance of China's companies have been discussed in this chapter, a review of the legal framework of foreign listing for China's companies will be provided in the following chapter. It is hoped that this can illuminate some of the hidden depths of the regulatory environment in which China's companies operate.

CHAPTER 4. METHODOLOGY FOR THE STUDY

While this research explores the corporate governance of China's overseas listed companies, its focus is generally upon the relationship between overseas corporate listings (or "cross-listings") and the corporate governance of China's companies. In particular, this research will seek to identify aspects of the corporate governance of China's overseas listed companies that have been improved through the process of foreign listing. In addition, this study aims to document how far political factors determine the nature of corporate governance in Mainland China's overseas listed companies.

It is hoped that the outcomes of this research will contribute positively to the corporate governance of China's overseas listed companies, and that the empirical research will illuminate key practices in selected companies so as to allow us to scrutinise some key aspects of their corporate governance practices.

As this methodology section sets out the basic methods and rationale applied in the process of fieldwork for this research, our discussion will be organized by reference to the following key issues:

- (a) The object of study and sampling
- (b) Method of data gathering
- (c) Research coordination

-
- (d) Interviews and informants
 - (e) Complete interview schedule
 - (f) Confidentiality
 - (g) Sample characteristics and limitations

I. THE OBJECT OF STUDY AND SAMPLING

In general, the aim of qualitative research is to “elicit the contextualized nature of experience and action, and attempts to generate analyses ... in the sense of relating individual events and interpretations to larger meaning systems and patterns.”²⁷¹

With the help of reliable qualitative data, researchers could “document the world from the point of view of the people studied ... rather than presenting it from the perspective of the researcher.”²⁷²

As has been illustrated in the text below, the focus of study is the corporate governance of those Mainland China companies that have been listed overseas.

Where corporate governance consists of some essential variables, the directors and top management of China’s overseas listed companies should clearly understand such variables and their impact, since such directors and top management are the main executors who perform the duty of corporate governance in Chinese companies.

²⁷¹ Liamputtong, Pranee and Ezzy, Douglas, *Qualitative Research Methods*, Oxford University Press, South Melbourne, 2005, p. 2.

²⁷² Hammersley, Martyn, “Deconstructing the Qualitative-Quantitative Divide”, in *Mixing Methods: Qualitative and Quantitative Research*, Brannen, Julia edited, Ashgate, Aldershot, 1992, p. 45.

Some of the Mainland's other professionals, such as intermediaries and scholars, are probably also familiar with the corporate governance practices of China's foreign listed companies, as their jobs allow them to gain access to such information.

It was anticipated that the individuals mentioned above would provide insights into the corporate governance of China's overseas listed companies during the discussions regarding a series of topics in the empirical interviews. A previously drafted questionnaire that reflected the key issues and propositions of the current research would be employed to guide the empirical interviews.

II. METHOD OF DATA GATHERING

One key point to gathering data for this research was to critically evaluate official company documents, such as the annual and sustainability reports of these overseas listed Chinese companies, and then to identify their deficiencies. Foreign stock exchange reports could also be useful to a certain degree. In addition, a review of the international financial press's literature on foreign listings was considered valuable as a separate analysis, when it was combined with research from analysts from market research bodies, such as the well-regarded US short-seller, Muddy Waters.

Apart from critically evaluating listed company documents, on-site in-depth interviews were the key to gathering useful information for this research. The

qualitative empirical investigation of this study was conducted on a basis of on-site face-to-face interviews using a semi-structured interview-schedule approach, with informants from several selected overseas listed Chinese State Owned Enterprises (SOEs). Attempts were made to invite a number of interviewees from each company to participate in the face-to-face interviews, and the field-work research with the interviewees of these target SOEs was generally carried out in their corporate offices in Beijing wherever physically possible.

I sought to interview informed senior officers in leading Chinese companies that had listed abroad (e.g. in the Company Secretary's office). I also sought to interview Corporate Counsel, who is often the Company Secretary in these companies. Executives in the listing department of the company and the Shanghai Stock Exchange were also approached for interview; however in most instances, interviews with such individuals were hard to set up as they were all very powerful people in some particularly large China's companies (i.e., those that list on foreign stock exchanges). The fieldwork for this thesis took place at the politically sensitive time of the period leading up to the change over from the leadership of the Hu-Wen era (President and Premier) to the new national leadership of President Xi and Premier Li; this meant that many interviews in government agencies were extremely cautious about talking about sensitive topics such as the foreign listing of leading Chinese companies.

As setting up these kinds of in-depth interviews with senior executives of China's overseas listed companies was not always possible, empirical research was undertaken in a more indirect way, this was to talk to proxies for senior corporate executives, such as regulators and professional intermediaries, such as accountants in the Big Four accounting firms, lawyers in large local and international law firms located in Beijing, professional consultants in securities firms and experienced financial journalists. Eventually several other miscellaneous informants were approached to take part in the on-site interviews as they were directly involved in the corporate governance practices of either major Chinese SOEs or sizeable enterprises. These miscellaneous informants comprised auditors, chartered accountants, economic experts, foreign lawyers and legal scholars. The involvement of these miscellaneous respondents in the interviews ensured that more objective qualitative data could be obtained for the study, since these professional intermediaries were independent of state control to a certain degree. Such persons are sometimes called upon to act as directors or advisers of major Chinese companies which listed abroad.

While drafting the interview schedule, the annual reports of these target companies were first reviewed to obtain quotable references. When a number of foreign stock exchanges issued their *comply or explain* codes of corporate governance and attached these to their exchange's listing rules, these target Chinese companies listed on such foreign exchanges accordingly made disclosure statements. Although there was little elaboration about corporate governance in these annual reports and

disclosure statements, they could still provide some useful insights into the target companies. Once the interview schedule had been drafted, and then revised following a pre-test, interviewees were given advance notice of the broad areas to be covered in these interviews. The schedule of questions generally examined the extent to which corporate governance practices in overseas listed companies had changed as a result of their listings abroad, and how these practices related to corporate governance principles in the respective foreign stock exchanges.

Each interview took between one to three hours to complete, with eleven on-site interviews being conducted in Beijing producing 25 interview hours of data. Together with two written interviews, the thirteen interviews in total resulted in more than 60 pages of transcripts. Interviewee comments were transcribed by hand during the interviews, with a digital copy of the data created at a later time. In addition, I tried to transcribe the interview on the same day wherever possible, since this should help to achieve optimum results. Where a good rapport had been established with some informants, a digital recorder was openly used in several interviews with the permission of the informants.

A written summary of this empirical research and the broad findings of the project will be provided to each interviewee, and data obtained has been automatically anonymised.

III. RESEARCH COORDINATION

The bulk of these empirical research practices were handled by me as the candidate, while my supervisor, Professor Tomasic, and I had a number of brief meetings in preparation for the fieldwork. As a consequence, the thesis draws upon data derived from fieldwork involving thirteen respondents who were interviewed in Beijing during November 2011.

Dozens of senior managers and executives of the target companies were invited to participate in the fieldwork while they were being asked to make a remark on these issues listed in the fieldwork questionnaire. When contacting respondents, I endeavoured to get into the Company Secretary's office, since it is generally accepted that the Secretary is sufficiently independent to be able to make such decisions. Technically, I did not begin in a complex manner, merely telling the respondents that I was interested in corporate governance issues in China and how these reflect international standards. As top management of these Chinese target companies always treat foreign empirical researchers with great caution, I did not dwell upon the issue of foreign listings when trying to set up the interviews, since that might have resulted in the whole fieldwork reaching an impasse.

In addition, acquaintances and friends who could help as an intermediary were also engaged with, as this could open up greater opportunity for the fieldwork. However, interviews were not conducted over the telephone, since such respondents who

operate company telephones would be less likely to be educated in corporate governance issues.

Overseas Listed Chinese Companies

China Mobile Limited Company (China Mobile)

When China Mobile was incorporated in Hong Kong, Several e-mails were initially sent to their Hong Kong corporate office.²⁷³ Unfortunately, no response was forthcoming. Subsequently, phone calls were made to China Mobile Communications Corporation (CMCC), which is the parent company of China Mobile. However, all the calls were rebuffed fiercely by those members of staff who answered the calls, to the point where they even denied having previously discussed this subject with me. It appeared from their attitude that foreign-based empirical research was definitely prohibited by CMCC, and that there was a conspiracy of silence surrounding this subject among most executives of CMCC. Later, a member of staff highlighted that CMCC should not be called directly as it is a ministry-levelled “state apparatus”.

Despite a number of setbacks, I persevered in my attempts to phone China Mobile and CMCC. Unfortunately, the executives of China Mobile and CMCC were challenging to approach and their casual dismissal of this kind of empirical research seemed somewhat irresponsible. Such executives professed that the corporate

²⁷³ The contact email addresses of China Mobile are available at: <http://www.chinamobileltd.com/contact.php>, accessed January 21, 2012.

governance structure of China Mobile was well established, and that there was no reason for them to become involved in the fieldwork of this study. Above all, it was claimed that they only disclosed corporate governance information of China Mobile and CMCC through official company documents, such as annual reports and sustainability reports.

By sheer good fortune I eventually successful in inviting three senior managers (Mr B, Miss C and Mr D) of a major Chinese telecommunications SOE to give interviews, having received considerable help from my mother. Fortunately, as she had worked in the China National Development and Reform Commission as a junior official, she was in some way connected with a number of other junior officials in some of China's major telecommunications SOEs.

While a number of factors might decide whether these kinds of academic fieldwork interviews could be successfully set up, it seems that having good interpersonal relationships with some officials of the target SOEs is still the critical factor. Mr B, who held a post of senior manager at one of China's renowned telecommunications SOEs, indicated that there is still an inclination in Mainland China to treat these kinds of foreign empirical research projects as a precarious venture. This could explain why most executives of these target Chinese SOEs who had been contacted had tried to distance themselves from this study's fieldwork.

PetroChina Company Limited (PetroChina)

In the first instance, several messages were sent by electronic mail to the Investor Relations Office, Public Relations Office, Foreign Affairs Office and Legal Affairs Department of PetroChina;²⁷⁴ however as anticipated, there was no response to my enquiries. Then, I made every effort to phone these departments of PetroChina, but found no one who could answer my queries. In fact, those who answered the telephone were all trying to skirt around the issue, as they explained that their opinions seemed to carry very little weight in regards to foreign fieldwork studies in PetroChina. Although their excuses were starting to become somewhat implausible, there was undoubtedly a great deal of truth in their assertions that the senior executives of most major Chinese SOEs seemed to isolate themselves from foreign empirical research.

The Secretary's office of PetroChina was later contacted in the hope of arranging several interviews. Unfortunately, this was to no avail as a senior secretary advised me not to phone them again, since there was no real possibility of their participation in my fieldwork. In fact, this senior secretary regarded these kinds of foreign fieldwork as risky activities. Moreover, he thought it was better to maintain a cautious approach since the fieldwork would bring them few tangible benefits. This senior secretary even suspected that I was a spy from British research institutes, which in the circumstances was somewhat farfetched.

²⁷⁴ PetroChina provides email addresses of most departments on its website, and the contact number of some departments is also accessible, available at: http://www.petrochina.com.cn/Ptr/About_PetroChina/Contact_Us/, accessed January 23, 2012.

Since the situation appeared intractable, I decided to seek the aid of a college associate who was in a position to appeal for assistance to a senior engineer of PetroChina. Through the engineer's support, a manager (Mr H) of a large Chinese petrochemical SOE finally agreed to give an interview. As this senior engineer had a long record of service in the petrochemical industry, he also managed to persuade another manager (Mr L) of a renowned Chinese petrochemical enterprise to be a party to my fieldwork. Unfortunately, there was still some reluctance on the part of Mr L to become involved in the empirical interview in person, and he only agreed to complete the interview schedule in writing.

China National Offshore Oil Corporation Limited (CNOOC Ltd.)

CNOOC Ltd. did not provide any contact email address on their website,²⁷⁵ and the email address of China National Offshore Oil Corporation (CNOOC Group, the parent company of CNOOC Ltd.) was not operational due to excessive volumes of unsolicited emails.²⁷⁶ Thus, several phone calls were made to the Beijing office of CNOOC Ltd. in an attempt to secure a number of interviews. To my surprise, the employees of CNOOC Ltd. were willing to discuss the empirical fieldwork with me. Significantly, CNOOC was the only company that did not give me an instantaneous negative response, among the six Chinese companies targeted.

²⁷⁵ See the Contact Us section of CNOOC Ltd, available at: <http://www.cnooclt.com/encnooclt/AboutUs/Contactus/default.shtml>, accessed January 28, 2012.

²⁷⁶ The contact email address of CNOOC Group is available at http://en.cnooc.com.cn/data/html/english/channel_128.html, accessed January 29, 2012.

CAO Yan, who was a member of staff in the Legal Department, helpfully suggested that I should send further details of my empirical research to his personal email address. As a general rule of social science empirical research, interviewees should be given advance notice of the broad areas to be covered in interviews. When these corporate executives became aware of the topics that I was pursuing, they could possibly have had a more compelling reason to see me.²⁷⁷ Thus, I immediately sent a detailed description of my fieldwork to Cao.

I later received a reply from ZHANG Fan, the director of Investor Relations department in CNOOC Ltd., who said they were keen to help but that there was a necessity for them to examine in detail the complete interview schedule of my fieldwork in advance. Professor Tomasic, who has had considerable experience conducting in-depth interviews with Chinese top executives and state officials, had reminded me that it was advisable to provide only a simplified version of the interview schedule to these Chinese would-be interviewees before the on-site interviews, since they might give some bureaucratic or stock answers if they had received the complete interview schedule beforehand. Following this advice, I selected only fifteen questions from the interview schedule that did not appear to be too politically sensitive, and forwarded them to ZHANG Fan.

²⁷⁷ Thomas, Robert J., "Interviewing Important People in Big Companies", in *Studying Elites Using Qualitative Methods*, Hertz, Rosanna and Imber, Jonathan B. (edited), Sage Publications, Thousand Oaks, 1995, p. 9.

Unfortunately, I received a swift and negative response, which revealed that those in charge of corporate governance in CNOOC Ltd. would have a demanding schedule all year round, and that they would not be available for interviews. Potentially, these would-be interviewees of CNOOC fell back on the common excuse of having no time and did not show the slightest inclination to make any comment on the interview schedule.

In fact, it is not uncommon for researchers to get into the situation of “cold calling” when they are trying to get access to business elites.²⁷⁸ It would be desirable, if not essential, to have a relative or a family friend who could help as an intermediary for setting up these empirical interviews, especially in a country such as Mainland China in which personal relationships have been placed in such high esteem. Hence, I asked a relative to try to contact a vice president of CNOOC so as to make enquiries about my proposed fieldwork. Unfortunately, this vice president responded that he had to handle these kinds of foreign empirical research with circumspection, or there would be a strong possibility that it might jeopardise his position. Furthermore, he asserted that I would not have any opportunity of setting up these empirical interviews by merely phoning junior officials of the Secretary’s Office in the target SOE, since such decisions were outside the remit of these junior officials.

As the secretary of the board of directors could be deemed as a representative of a

²⁷⁸ See Buchanan, David; Boddy, David and McCalman, James, “Getting In, Getting On, Getting Out and Getting Back”, in *Doing Research in Organizations*, Bryman, Alan edited, Routledge, London, 1988, p. 53.

company, my relative asked the said vice president of CNOOC to approach the secretary; however he rejected our request, indicating that the secretary of the board in CNOOC was actually a vice minister level official whose ranking was higher than his, and he would never ask for any favours from a higher ranking official as it would break the unwritten rules of Chinese bureaucracy.

Ultimately, this vice president of CNOOC declined upon learning more of the details of my fieldwork. He suggested that his rejection was largely due to the sensitive nature of my research, and that it was a singularly inappropriate moment to do such a study since China's leadership transition was occurring at that time.²⁷⁹ He further suggested that some information that I had requested, such as "the role of the Party's committee", could even be classified as state secrets under certain given circumstances.²⁸⁰

As several foreign scholars have pointed out, on occasion there has been a necessity for survey researchers to invite officials of China's SOEs to dinner in elegant

²⁷⁹ The political leadership transition of Mainland China is pending in the fall of 2012, with the 18th National Congress of the Communist Party taking place at this time. Seven out of the nine current Politburo Standing Committee members will be reaching retirement age in this coming transition; see Foster, Peter, "China 2012: The Year Ahead", *The Telegraph*, Dec 19, 2011, available at: <http://www.telegraph.co.uk/news/worldnews/asia/china/8958432/China-news-2012-the-year-ahead-as-Hu-Jintao-steps-down.html>, accessed February 2, 2012.

²⁸⁰ The definition of "state secrets" is quite vague in Mainland China; see Article 2 and Article 9 of *The Law of the People's Republic of China on Guarding State Secrets* (2010 Order No.28 of the President of the People's Republic of China), adopted at the 3rd meeting of the Standing Committee of the 7th National People's Congress of the People's Republic of China on September 5, 1988, and amended at the 14th meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on April 29, 2010, and effective as of October 1, 2010, available at: <http://www.lawinfochina.com/display.aspx?id=8039&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B1%A3%CA%D8%B9%FA%BC%D2%C3%D8%C3%DC%B7%A8>, accessed February 2, 2012.

surrounding so as to establish a reciprocal relationship with them.²⁸¹ Thus, I later asked my relative to invite the said vice president of CNOOC for an evening meal, but he turned down our invitation for reasons unexplained. This vice president told my relative confidentially that CNOOC had issued an internal notice some time ago, which required that all CNOOC executives should opt out of these kinds of foreign empirical interviews. Presumably, the origins of this ban on foreign empirical research were several controversial incidents which had occurred in 2011, such as the Bohai Bay oil spillage²⁸² and Huizhou refinery explosion,²⁸³ which unleashed a wave of criticisms of CNOOC.

China Petroleum & Chemical Corporation Limited (Sinopec Limited)

As Sinopec Limited did not provide any contact email address on their website,²⁸⁴ the annual reports and other documents that Sinopec Limited issued on foreign stock exchanges were scrutinised, but no contact email address could be retrieved. Then, I forwarded several enquiry emails to Sinopec Group, which was the parent company

²⁸¹ Redding, S. Gordon, *The Spirit of Chinese Capitalism*, Walter de Gruyter & Co., Berlin, 1993, p. 247.

²⁸² The Penglai 19-3 oilfield caused an oil spillage on June 4, 2011 which lasted for 3 days. On June 17, 2011, a second oil spillage occurred again at the Penglai 19-3 oilfield. Over 800 square kilometers of clean water in Bohai Bay had been polluted by the leaks. As a 51 per cent stake in the oilfield was owned by CNOOC, CNOOC were roundly criticised for not taking the problem seriously, since CNOOC did not publicly report this incident until July 5, 2011. Moreover, a third leak took place in Suizhong 36-1 oilfield on July 12, 2011; see Chen, Aizhu and Hua, Judy, "CNOOC Says Bohai Bay Oil Spill Sources All Sealed: Xinhua", *Reuters*, October 24, 2011, available at: <http://www.reuters.com/article/2011/10/25/us-china-bohai-sea-oil-leak-idUSTRE79O05U20111025>, accessed February 5, 2012.

²⁸³ An explosion occurred at the CNOOC Huizhou refinery on July 11, 2011, which is located at the Daya Bay Economic and Technical Development Zone in Guangdong province. With the Huizhou refinery fully owned by CNOOC Group, which is the parent company of CNOOC Ltd, and its location not far away from the Daya Bay Nuclear Power Plant, hence this incident aroused considerable alarm among local residents; see Chen, Aizhu and Kwok, Donny, "China CNOOC Refinery Shuts Aromatics Unit After Fire - Sources", *Reuters*, July 11, 2011, available at: <http://www.reuters.com/article/2011/07/11/idUSL3E7IB05J20110711>, accessed February 8, 2012.

²⁸⁴ See Contact Us section of Sinopec Limited website, available at: http://english.sinopec.com/contact_us/, accessed February 9, 2012.

of Sinopec Limited.²⁸⁵ Unfortunately, the email address of Sinopec Group was not functioning and all my enquiry emails were returned.

Under the circumstances, I called the switchboard of Sinopec Limited and asked for the secretary of the board's telephone extension to enquire about my proposed fieldwork. Unsurprisingly, these junior secretaries who answered my phone call declined to participate in my interviews and rejected my enquiries on one pretext or another. It appalled me that a junior secretary even questioned the veracity of my proposed fieldwork, when he questioned whether my intention was to scour their company for unfavourable news and then sensationalise it. As it was proving consistently difficult to gain the confidence of these would-be interviewees of China's largest SOEs, I later attempted to telephone the secretary of the board office in Sinopec Limited again so as to delineate my empirical research. However, these members of staff in the secretary of the board's office terminated the call impatiently. Finally, I decided to try telephoning them repeatedly, but there was no response, and all my telephone calls were forwarded to a voicemail.

As there was absolutely nothing more I could do, I turned to a distant relative for help. This relative used to serve under a vice mayor of Beijing municipal council, and she had acquired some social connections with a senior manager of Sinopec Limited. As some scholars suggested, the interviewers needs to gain some trust with

²⁸⁵ The contact information of Sinopec Group is available at <http://www.sinopecgroup.com/english/Pages/ContactUs.aspx>, accessed February 9, 2012.

the would-be informants at first, especially if the research is sensitive or intrusive.²⁸⁶ Moreover, establishing rapport with respondents should be high on the list of priorities for most survey researchers, as it could open the doors to more informed fieldwork.²⁸⁷ Thus, when I tried to examine the situation of my fieldwork from the viewpoint of these would-be interviewees of Sinopec Limited, my aim of removing the would-be informants' doubts about my empirical interviews was of primary importance.

Unfortunately, it appeared that dispelling the doubts and fears of these Chinese SOE officials was only half the battle. Although the said senior manager of Sinopec Limited expressed some initial interest in my fieldwork, he flatly refused to participate after reading my interview schedule. According to the explanation of this senior manager, his refusal of my proposed interviews was due in large part to the highly undesirable timing of my fieldwork, since the former chairman of Sinopec, CHEN Tonghai, had been sentenced to death with a two-year reprieve in a corruption case in mid-2009.²⁸⁸ Consequently, almost everyone in Sinopec had been very careful not to overstep the bounds of propriety since then, so that nobody was relishing the prospect of participation in these kinds of foreign empirical research.

²⁸⁶ Cicourel, Aaron V., *Theory and Method in a Study of Argentine Fertility*, John Wiley, New York, 1974, p. 1.

²⁸⁷ Fontana, Andrea and Prokos, Anastasia H., *The Interview: From Formal to Postmodern*, Left Coast Press, Inc., Walnut Creek, 2007, p. 46.

²⁸⁸ CHEN Tonghai, the former chairman of Sinopec, was convicted of taking US\$ 29,012,087 in bribes by Beijing No.2 Intermediate People's Court in July 2009 and given a death sentence, with a two-year reprieve. It was said CHEN Tonghai had amassed US\$ 29 million through bribes and embezzlement between 1999 and June 2007, before he resigned as chairman of Sinopec Limited. In fact, CHEN Tonghai had been criticised by some for being strong-minded and autocratic when he held the post as chairman of Sinopec Limited. As expected, Sinopec Limited refused to comment on this after the trial; see Moore, Malcolm, "Sinopec Chairman Gets Suspended Death Sentence for Bribery", *The Telegraph*, July 15, 2009, available at: <http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/5834749/Sinopec-chairman-gets-suspended-death-sentence-for-bribery.html>, accessed February 12, 2012.

This senior manager finally recommended that I should seek the seal of approval for my fieldwork from the top official of Sinopec Group, otherwise there was little prospect that I could conduct the interview. Furthermore, he was also convinced that the junior secretaries in the Sinopec secretaries' office had little voice in giving official approval for foreign academic interviews.

As we had failed to invite these would-be interviewees of Sinopec to give interviews in spite of all our exertions, I decided to seek the aid of a former classroom associate. Ultimately, Mr M, a senior manager who came from a giant Chinese state-owned petrochemical company, allowed himself to be persuaded into participating in the fieldwork. Unfortunately, Mr M declined to be present in the interview in person, and only provided written responses to the interview schedule.

Ping An Insurance (Group) Company of China Limited (Ping An)

Ping An Company did not provide any contact email address on their Chinese website, but the contact details of the Investor Relations team of Ping An was available on their English website.²⁸⁹ Thus, the Investor Relations team was written to so as to enquire about the proposed empirical research. Ping An was very different from other target Chinese companies as they made a courteous and prompt response in reply to my enquiry. Unfortunately, Crystal ZHU, the senior secretary of the Investor Relations team, advised me that they would not be able to attend my

²⁸⁹ See Ping An Investor Relations Team, available at: <http://ir.pingan.com/en/gtouzizheguanxixiao/index.shtml>, accessed February 15, 2012.

empirical interviews. They presented a high-sounding case for their refusal, which claimed that Ping An only disclosed corporate governance information through official documentation, such as interim reports and annual reports that were published on the Hong Kong and Shanghai Stock Exchanges.

Zhu argued that some relevant policy governing information disclosure had been formulated by Ping An, and that such company policy had to be followed. Moreover, Zhu had signalled that Ping An was a cross-listed company simultaneously listed on the Hong Kong Stock Exchange and the Shanghai Stock Exchange, and that there had been a necessity for Ping An to strictly adhere to the listing rules with regard to information disclosure of these two stock exchanges. Besides, it was also alleged that Ping An would never disclose any corporate governance information through unofficial channels, as this might give some investors an unfair advantage over others. Legally this is quite compelling.

After the failure of the first attempt, I decided to take a chance and gave a telephone call to the Investor Relations team of Ping An, which was affiliated to the Shenzhen headquarters of Ping An. However, the response of the secretary in the Investor Relations team to my fieldwork proposal was unreceptive. They reiterated that no individual member of staff was able to offer an interview after the board of Ping An had laid down a strict code of corporate information disclosure, and that the corporate governance data of Ping An was accessible only by official documents

such as in its annual reports.

By sheer good fortune, a junior official in the Beijing branch of Ping An was a business acquaintance of one of my relatives. This junior official had highlighted the sensitive nature of my empirical research when he was reviewing my interview schedule, but he had agreed to give the matter priority from the outset. Besides, he had been very direct in pointing out that most officials of China's SOEs would not take part in this kind of empirical research since they would not stand to gain from it. Furthermore, this junior official confided to my relative that it had been heard that the board of Ping An had taken internal disciplinary action against a top executive some time ago, as this said top executive had disclosed some corporate information about Ping An to a foreign journalist without permission. Apparently, the board of Ping An had been reprimanded by the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) after this leaked corporate information of Ping An attracted foreign press coverage.

Although we tried everything we possibly could to convince the said junior official in the Ping An Beijing branch regarding the anonymity for my empirical interviews, he eventually refused to help me organise any interviews. While this junior official regretted any inconvenience that this might have caused, he also advised us that he could not risk giving an interview, since that would have placed him in danger of losing his position.

Tsingtao Brewery Company Limited (Tsingtao Brewery)

Tsingtao Brewery, which is located in Qingdao city in Shandong Province, provided a contact email address on their official website.²⁹⁰ Like many other of the large Chinese SOEs, the email address of Tsingtao Brewery was not working since it had been inundated with unsolicited messages, and was waiting for maintenance. A telephone call was thus made to the switchboard of Tsingtao Brewery, and then the operator put me through to the Academic Research Center, which was in charge of corporate governance practices. As was often true of first contacts, a female senior research assistant reported that they were too committed to their own work to have spare time for giving interviews. In addition, this senior research assistant said she did not think my empirical research would make a great contribution to the corporate governance practices of Tsingtao Brewery, as they had participated in some similar fieldwork projects in recent years. Thus, she thought there was no benefit in duplicating similar empirical research already conducted.

The next week a follow-up telephone call was made to the Investor Relations office of Tsingtao Brewery. This time I tried to spell out as clearly as possible the rationale for my empirical research, its objectives and methodology, with the intention of discriminating my study from other fieldwork that Tsingtao Brewery had participated in. However, the senior secretary who answered the phone call still firmly refused to

²⁹⁰ The email address of Investors Relations department in Tsingtao Brewery is available at: <http://stock.tsingtao.com.cn/>, accessed February 20, 2012.

participate in the research, nor would he allow access to his superiors.

In reality, my supervisor, Professor Tomasic, had conducted face-to-face interviews in Qingdao city with some informants from Tsingtao Brewery during 2003 and 2004.²⁹¹ I tried to take advantage of this previous relationship so as to persuade the personnel of Tsingtao Brewery to provide interviews, but all my efforts appeared to be in vain. The senior secretary in the Investors Relations office of Tsingtao Brewery then said a few words to the effect that the respect they held for Professor Tomasic could make all the difference, as the Professor's influence on the fieldwork trip to Tsingtao Brewery could be utilised as the subject matter for good publicity for Tsingtao Brewery.

Technically, participating in the empirical research of a famous foreign professor could probably help Tsingtao Brewery raise its own international profile. By contrast, my fieldwork had been considered to be of dubious benefit to Tsingtao Brewery, since my position was merely that of a Chinese postgraduate student.

Towards the end of my follow-up telephone call, the senior secretary in the Investors Relations office of Tsingtao Brewery confirmed that all the contact email addresses published on their official website were not functioning. In fact, they would not publicise any effective email address of theirs, since they always received large

²⁹¹ See Tomasic, Roman A. and Andrews, Neil, "Minority Shareholder Protection in China's Top 100 Listed Companies", *The Australian Journal of Asian Law*, Vol. 9, No. 1, 2007, p. 95.

volumes of unsolicited messages.

Accounting Professionals

With the help of an old school friend, I successfully invited Miss A, who was working in the Beijing branch of a giant international accounting firm as senior auditor, to participate in my empirical interviews. “Guanxi” is an important means of transacting business in China where the environment is unfriendly or uncertain. So, I resorted to these traditional methods in an effort to further my research.

Miss F used to study economics in The Chinese University of Hong Kong, and she had also obtained a Master’s degree in economics from the U.K.’s Cambridge University. With Miss F currently holding the position of senior associate in a major Chinese investment firm, she was acquainted with the corporate governance practices of some of China’s major companies. Furthermore as she was an acquaintance of my family in Beijing, Miss F ensured that she found the time to provide an interview.

In fact, I also attempted to get two other former school associates involved in these empirical interviews. They were both working in KPMG as qualified accountants, and so they had connections with a number of China’s SOEs. Unfortunately, they refused my request for help, informing me that the staff members of KPMG had been forbidden to take part in this kind of fieldwork under the regulations of KPMG.

Legal Professionals and Academics

Quite a number of major international law firms have set up their representative offices in Beijing and Shanghai in recent years, among them many have established good working relationships with large Chinese companies. Thus, senior lawyers in such international law firms have gained much personal knowledge about the corporate governance practices of China's companies.

The outline of my research was sent by email to about 150 lawyers from 40 international law firms, but the response rate was low. Three lawyers gave prompt but negative replies, which included: Betty Xie of Linklaters LLP (Beijing office), Elaine Fei of O'Melveny & Myers LLP (Shanghai office) and Paul C. Deemer of Vinson & Elkins LLP (Beijing office). It was said they preferred not to partake in my fieldwork due to relevant constraints or regulations of their law firms.

Fortunately, three other foreign lawyers made timely positive responses and they ultimately managed to participate in the interviews. These three foreign lawyers, who consisted of Mr E (British partner in the Corporate & Finance Department of an international law firm), Mr G (American managing partner of the Asia Capital Markets practice in an international law firm) and Mr I (American senior lawyer of an international law firm), had broad experience in cross-border mergers and acquisitions, corporate finance and financing work in Hong Kong and in Mainland

China, and in relation to international IPOs, with experience in energy and resource transactions as well as numerous other industrial sectors. The experience of Mr E even extended to acting for both investment banks and issuers, and in relation to H-share, red-chip and A+H share transactions. These foreign lawyers provided valuable criticism and information for my empirical research.

Professor J was the director of the Economic Law Research Center in a well-regarded Chinese law school. Meanwhile, he was also a Beijing-based academic company lawyer who acted for some large Chinese companies. As Professor J's practice encompassed a broad range of corporate and securities law matters, he gave me useful comments and suggestions in the interview.

An enquiry email regarding my empirical research was also sent to other well-regarded academic company lawyers, such as ZHAO Xudong, who was the deputy head of Civil and Economic Law College in the China University of Political Science and Law. However, none of my enquiries met with a response.

Regulatory Officials

One of my former school associates had worked in the China Securities Regulatory Commission (CSRC) for several years. Thus, I hoped to enlist the help of this individual in setting up a number of interviews with regulatory officials of the CSRC. However, this person could not offer me any practical assistance with my fieldwork.

From the account of this school associate, the director of the CSRC had reiterated that the CSRC's regulatory officials and China's SOE's executives should not get involved in any foreign academic research activities in a number of internal off-the-record meetings during that period. My school associate had no idea why the CSRC had placed such strictures against staff members participating in foreign academic research, but it was said that these tough measures were introduced to prevent foreign agitators from trawling through China's large enterprises looking for scandals. According to the knowledge of my school friend, the vast majority of regulatory officials or SOE executives did not dare to contravene this injunction of the CSRC, for fear of being singled out by the CSRC's disciplinary committee.

Enquiry emails were also sent to several regulatory officials of the Shanghai Stock Exchange (SSE), such as to the Director of the Research Center in the SSE, but no acknowledgement of my email was received.

Independent Directors

Mr K, who was an economic expert and independent director of a Chinese state-owned investment company, could be numbered among one of my closest friends. He used to work in the Beijing Standard Financial Consultant Co., Ltd., as well as the Huiya Equity Investment Fund Company as an executive director for over seven years. Technically, the Beijing Standard Company and Huiya Investment Company were *de facto* owned by Professor LIU Jipeng. Professor LIU was

nominally the director of Securities Research Center in the China University of Political Science and Law, while his true identity was as a key protégé of LI Keqiang, first ranked vice-premier and deputy party secretary of the State Council of China and now the Premier of China.²⁹² In addition, LIU Jipeng had good personal relationships with several other senior officials of China who served under LI Keqiang in charge of economics and finance, such as WANG Yong and ZHOU Xiaochuan.²⁹³

Technically, Professor LIU rendered a financial counselling service for over 30 per cent of the centrally-owned enterprises in China,²⁹⁴ and he also had been involved in long-term partnerships with many leading private Chinese companies. These special backgrounds of Mr K placed him in a unique position to be able to attend the annual general meetings, board meetings and Party committee meetings of some large Chinese SOEs and enterprises in an external financial advisory capacity. As Mr K had gained valuable first-hand experience whilst working with senior executives coming from these large Chinese companies, he provided valuable insights into the corporate governance practices of some of China's major SOEs and other large

²⁹² While LI Keqiang is the seventh ranked member of the Politburo Standing Committee of China, his official portfolio includes economic development, finance and macroeconomic management; see British Broadcasting Corporation (BBC) News, "China Faces to Watch: Li Keqiang", March 5, 2012, available at: <http://www.bbc.co.uk/news/world-asia-china-17217517>, accessed March 9, 2012.

²⁹³ WANG Yong was the chairman and party secretary of State-owned Assets Supervision and Administration Commission of the State Council (SASAC), see SASAC, Chairman & Vice Chairmen, available at: <http://www.sasac.gov.cn/n2963340/n2963378/10267567.html>, accessed March 12, 2012; and ZHOU Xiaochuan was the governor of The People's Bank of China, he had been in charge of the monetary policy of Mainland China since 2002, see The People's Bank of China, Management Team, ZHOU Xiaochuan, available at: <http://www.pbc.gov.cn/publish/english/1005/index.html>, accessed March 12, 2012.

²⁹⁴ Central-owned enterprises of China refer to these state-owned enterprises owned by the central government of the People's Republic of China, the total number of China's central-owned enterprises was 123 by 2010; see Xinhua News Agency, "Mergers Reduce China's Central SOEs to 123", August 05, 2010, available at: http://news.xinhuanet.com/english2010/china/2010-08/05/c_13431948.htm, accessed March 22, 2012.

private companies in the interview.

IV. INTERVIEWS AND INFORMANTS

The qualitative data for this study was collected through face-to-face interviews with academic lawyers, China's SOE managers, officials, professionals and several other miscellaneous interviewees. The core of this empirical research was based on interviews with Chinese SOE managers, and other informants who had been directly involved in the corporate governance practices of large Chinese SOEs and companies in Beijing, China.

Certainly, it would be desirable to include qualitative board level data in the study, since most important corporate governance issues of China's SOEs and large companies could only be decided at board or even higher level.²⁹⁵ Thus, there was a necessity to interview the individuals who could gain access to such corporate governance information. Unfortunately, it was not possible to insist on exactly whom was interviewed, since this largely depended on whether the would-be interviewees were willing to accept the invitation to participate in the empirical interviews. This is an endemic problem with qualitative research, especially that which relies upon the "snowball" method of referrals to obtain access to further interviewees.

²⁹⁵ In a Chinese state-owned or held company, the Communist party's committee could control the corporate governance through exerting its influence upon the board of directors and CEO. Hence the Party's committee in a China's state-owned or held company can be deemed as a board level body. In some cases, the board and CEO are even under the rigorous control of the Party's committee.

In most of China's SOEs and large companies the upper-level managers who are in charge of a department, such as the finance or sales and marketing departments, actually have no voice in the decision-making process for major corporate governance issues. Such decisions generally fall within the remit of the company's vice chairman, chairman, vice president, president and the secretary of the Party's Committee. This means most upper-level managers in China's SOEs actually have sparse knowledge of the important corporate governance information relating to their own company.

Significantly, essential corporate governance information is accessible to the secretary of the board of directors in most of China's SOEs. Nevertheless, this major post is generally held by a vice chairman or vice president in the vast majority of cases.

Technically, the six target Chinese companies explored in the case study chapters of this dissertation²⁹⁶ are all ministry-level organisations in Mainland China. Therefore, these six companies' vice chairmen, vice presidents and the secretaries of the board are *de facto* vice minister-level officials, while the chairmen, presidents and the secretaries of the Party's committee are *de facto* minister-level officials.²⁹⁷

²⁹⁶ Please refer to Chapters 5 and 6 of this thesis.

²⁹⁷ For more information about China's political hierarchy system and the administrative grades of different governmental agencies, please refer to He, Qinglian, *The Fog of Censorship: Media Control in China*, Human Rights in China, New York, 2008, Chapter 4.

It is reasonable to infer that these senior executives of the six targeted companies who understand about the essential corporate governance practices of their own company are actually unavailable, as they can be deemed to be senior government figures rather than entrepreneurs. Basically, the only practical approach to secure the involvement of such senior government officials in these kinds of foreign research projects in Mainland China is to ask their immediate superior or some other state officials with superior status to arrange or even chaperone the interviews.

Unfortunately, not everyone can be fortunate enough to have this kind of social interpersonal relationship in China. In addition, some scholars have pointed out that senior executives of China's companies are not always candid in these interviews set up, or even chaperoned, by superior state officials.²⁹⁸ Similarly, Professor Tomasic has made a reference to these kinds of issues in a meeting, once asking GAO Xiqing, who was the deputy chairman at the China Securities Regulatory Commission (CSRC),²⁹⁹ to assist him in arranging interviews with senior managers of some Chinese enterprises in Shanghai city. As GAO Xiqing was in an influential political position, these Chinese senior managers could not easily turn him down. Nevertheless, such senior managers provided either bureaucratic answers or evasive comments in their interviews, since they were apprehensive that Professor Tomasic

²⁹⁸ See Walder, Andrew G., "Factory and Manager in an Era of Reform", *The China Quarterly*, Vol. 118, 1989, p. 247.

²⁹⁹ GAO Xiqing held the post of deputy chairman in CSRC from 1999 to 2003, and he currently is working in China Investment Corporation (CIC) as vice chairman and president; see China Investment Corporation (CIC), Governance, Board of Directors, available at: http://www.china-inv.cn/cicen/governance/governing_bod.html, accessed March 23, 2012.

would give negative feedback on their work to GAO Xiqing after the interviews.

Apart from government officials and semi-officials, academic lawyers, legal scholars and financial professionals were also invited to participate in the interviews, since the involvement of such individuals who were indirectly operative in the corporate governance practices of China's companies could provide a wider perspective on the target issues. Academic lawyers and legal scholars proved an extra dimension to the research, since they often had the opportunity to dissect the governance practices of China's companies. In contrast, the financial professionals, especially the auditors and chartered accountants who worked in the major financial institutions, actually played an intermediary role in the daily management of China's companies, as they reviewed the client company's systems from time to time and even helped client companies to make decisions about allocating resources. Basically, the participation of these interviewees hailing from different professions could help to avoid taking a biased approach to examining the corporate governance of China's companies.

In this research the author is extremely grateful to all the informants who gave their strong support and valuable time to the study. These interviewees sat for a number of hours in the interview and provided valuable information without apparent reserve. Unfortunately, it has not been possible to mention the real names of the informants and make a point of directly thanking them for their great help in this thesis, since the confidentiality of the discussions is important to almost all informants.

With all informants guaranteed confidentiality and anonymity, their names were anonymised. A simple code was developed by taking the initials of the informants, as this could facilitate the identification of each individual informant. The positions of all the individuals interviewed have been listed below, and each number (i.e. 1-13) indicates one interview. A brief description of their occupation and position has been provided for each interviewee.

The Interviewees and Informants

1. Miss A: senior auditor of an international accounting firm, Beijing, 2011
2. Mr B: senior manager of a Chinese SOE in the telecommunication sector, Beijing, 2011
3. Miss C: manager of a Chinese SOE in the telecommunication sector, Beijing, 2011
4. Mr D: senior manager of a Chinese SOE in the telecommunication sector, Beijing, 2011
5. Mr E (British): partner lawyer of an international law firm, Beijing, 2011
6. Miss F: senior associate of a Chinese financial consulting and investment firm, Beijing, 2011
7. Mr G (American): partner lawyer in an international law firm, Beijing, 2011
8. Mr H: manager of a Chinese SOE petrochemical industry, Beijing, 2011
9. Mr I (American): senior lawyer in an international law firm, Beijing, 2011

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10. Mr J: lawyer and legal scholar in a Chinese educational institution, Beijing, 2011
 11. Mr K: senior manager and economic expert in a Chinese financial consulting & investment firm, Beijing, 2011
 12. Mr L: senior manager in a Chinese SOE in the petrochemical industry, Beijing 2011 (who only agreed to participate in this project by providing written responses to the questionnaire)
 13. Mr M: senior manager in a Chinese SOE in the petrochemical industry, Beijing, 2011 (who only agreed to participate in this project by providing written responses to the questionnaire)

V. COMPLETE INTERVIEW SCHEDULE

Organisation

Organisation's name:

Organisation's address:

Organisation's founded date:

Organisation's main activities:

Organisation's sector:

Number of employees (active / retired):

Respondent

Respondent's name:

Respondent's gender:

Respondent's education (college graduate / postgraduate) (Has the respondent ever studied a degree course in a foreign academic institution?):

Respondent's field of specialisation (i.e., accountant, auditor, economist, lawyer, management, etc.):

Respondent's position in organisation:

Respondent's length of employment with organisation:

How was this respondent recruited?

Interview

Date of interview:

Place of interview:

Interview time length:

Provided *Durham Law School Ethics and Data Protection Monitoring Form*? (Yes / No)³⁰⁰

Interview Schedule

1. What are the key differences between the roles of the company President and the CEO in your company?
2. In so far as governance practices are concerned, what is the role of the Party's Committee in your company?
3. Can you describe the process of board appointment in your company?

³⁰⁰ Under the regulations of Durham Law School, research that involves human participants and / or raises ethical issues (e.g. interviews or questionnaires) requires approval in advance. Durham Law School's Ethics and Data Protection Review Group had approved the Ethics and Data Protection Monitoring Form of this PhD project prior to its commencement, which confirms that the methodology and reporting strategies of this project meet acceptable ethical standards. The said Ethics and Data Protection Monitoring Form of this study was provided to informants for their reference before each interview, and all informants had been informed that all collected data of this project would be processed in accordance with the rights of data subjects under the relevant regulations of Durham Law School.

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4. What is the company President's influence on board appointments in your company?
 5. What do you think of the size of the board in your company (i.e., is it too large or too small)?
 6. What do you think of the effectiveness of the outside directors (independent directors) in your company (prompt, are they suitably qualified and well enough informed to do the job)?
 7. What impact does the holding of multiple directorships by outside directors have upon governance practices in your company?
 8. How independent is the Board of Directors in your company?
 9. Are company board meetings in your company held frequently enough?
 10. Is board diversity an issue in your company (if so, how)?
 11. What do you think of the relationship between your company and its parent company (company group)?
 12. Do domestic institutional investors in your company have any noticeable influence over your company?
 13. How well are minority shareholders protected in your company?
 14. What change, if any, has the split share structure reforms had upon your company?
 15. Do you think the ownership structure of your company will change after the split share structure reforms are completed?
 16. Is it possible for the President (or board chairman) in your company to be

challenged?

17. To what extent is profit-maximisation the ultimate goal of your company's board?
18. Do government policy goals affect your company?
19. What do you think of the role of foreign institutional investors in your company?
20. Has the overseas listing of your company's shares been beneficial for your company (please give some examples)?
21. Has overseas listing of your company had an effect on the company's corporate governance practices?
22. Have the rules of foreign stock markets upon which your company is listed affected the corporate governance of your company?
23. What role do banks play in the corporate governance of your company?
24. Who is in the best position to effectively review the performance of the board and management in your company?
25. To what extent has foreign listing improved the performance of your company?

VI. CONFIDENTIALITY

It is widely known that Chinese people, especially senior official and elite professionals, have a strong natural tendency towards caution. In my empirical interviews, the informants were being asked to talk about issues concerning the corporate governance of large Chinese SOEs, which might be deemed as an unsafe

subject for discussion by many Chinese people. Particularly, some interviewees were requested to comment on the corporate governance practices of those Chinese companies that they worked for.

Unexpectedly, the anonymity of the interviewees was also a primary concern for some foreign lawyers. By the account of Mr G, who was an American partner lawyer working in a Beijing-based international law firm, it would not be advantageous for him to be openly hostile towards China's government, since he still had to practice law in Mainland China for the foreseeable future.

For these reasons, all interviewees were guaranteed confidentiality and anonymity. All names of the informants were anonymised and a simple code developed by taking their initials. This could facilitate the identification of the informants, and it would also help to ensure continuity between statements for a particular informant.

VII. SAMPLE CHARACTERISTICS AND LIMITATIONS

The selection of cases, i.e., selecting an individual company for case studies, is vitally important for this research. Meanwhile, the attributes of the industrial sectors in which these case companies belonged have been also taken into account. While hundreds of China's companies, including SOEs and private companies, had been listed on foreign stock exchanges, the scope of this study and time constraints only

allowed me to sample several of them.

First of all, a full list of China's overseas listed companies was made, which included these Chinese SOEs and private companies listed on the New York Stock Exchange-Euronext, NASDAQ, Hong Kong Stock Exchange and London Stock Exchange.³⁰¹ Indeed, some of China's companies had been listed on the stock exchanges of Australia, Canada, Germany, Japan, Korea and Singapore. However, these companies were not included in this list due to their comparatively small market capitalisation. Appendix lists provide the most up-to-date information of all of China's major foreign listed companies.³⁰²

According to the lists found in Appendix, there were 53 Chinese companies listed on the New York Stock Exchange (NYSE)-Euronext,³⁰³ there were 49 Chinese companies listed on the NASDAQ stock exchange,³⁰⁴ and 242 Chinese companies

³⁰¹ See Appendix.

³⁰² The information contained in the Appendix lists was last updated in October 2008. As rapid economic growth and swift change was occurring in China, some smaller companies in this list may have been delisted or suspended by the end of 2012. The relevant information of the top 15 Chinese companies listed on the New York Stock Exchange and Hong Kong Stock Exchange has been compiled into Table 4.2 and 4.3 (rated according to their market capitalisation).

³⁰³ This number includes 41 Chinese companies listed on New York Stock Exchange, 3 Chinese companies listed on NYSE Archipelago Exchange (NYSE ARCA), 1 Chinese company listed on NYSE Alternext U.S., 3 Chinese companies listed on NYSE Alternext Paris and another 6 Chinese companies listed on Euronext Paris-Marché Libre. In fact, Euronext Paris-Marché Libre is not a constituent part of NYSE Euronext French equities market. It is a non-regulated market administered by Euronext Paris for transactions in securities not listed on other markets; see New York Stock Exchange Euronext, *Euronext: Organization and Procedures*, Non-Regulated Markets, p. 11, available at: www.euronext.com/fic/000/010/706/107061.pdf, accessed March 30, 2012.

³⁰⁴ These 49 Chinese companies were listed on three different market tiers of NASDAQ stock exchange: 14 companies listed on NASDAQ Global Select Market (with the highest initial listing standards), 30 companies listed on NASDAQ Global Market (formerly the NASDAQ National Market) and 5 companies listed on NASDAQ Capital Market (formerly the NASDAQ Small Cap Market); for more information about the NASDAQ's new three-tier market classification which was created on July 1, 2006, see NASDAQ OMX Group, "NASDAQ Creates New Market Tier With Highest Listing Standards In the World", February 15, 2006, available at: <http://ir.nasdaqomx.com/releasedetail.cfm?ReleaseID=187664>, accessed March 31, 2012.

listed on the Hong Kong Stock Exchange (HKEx),³⁰⁵ and, finally, there were 68 Chinese companies listed on the London Stock Exchange (LSE).³⁰⁶

Largely, most of China's long-running, traditional State-owned Enterprises (SOEs) such as China Mobile, Chalco,³⁰⁷ CNOOC, PetroChina and Sinopec, opted for the NYSE as their prime listing venue. Relatively speaking, the majority of these 49 Chinese companies listed on the NASDAQ stock exchange, typified by Baidu, Inc., NetEase, Sina.com, Inc. and Sohu.com, Inc., which are all growing high technology companies involved in electronics or the Internet under private ownership. The proximity of Hong Kong to Mainland China, together with its high market liquidity, makes Hong Kong very popular with many China's companies that are seeking to list overseas. Appendix lists shows that the number of Mainland Chinese companies listed on the Hong Kong Stock Exchange had surpassed that of all other markets. Seemingly, a large proportion of these Chinese companies listed on the LSE had attained only a modest size, and very few large Chinese SOEs elected to list their securities on the LSE. Significantly, many of China's major SOEs decided to execute

³⁰⁵ These 242 Chinese companies were listed on two different market tiers of HKEx: 198 companies listed on HKEx Main Board and 44 companies listed on HKEx Growth Enterprise Market (GEM); 6 of these companies had been suspended for over 1 year by October 2008; for more information about the two different market tiers of HKEx, see Hong Kong Stock Exchange, Our Markets, available at: http://www.hkex.com.hk/eng/listing/listhk/our_markets.htm, accessed April 2, 2012.

³⁰⁶ 6 of these 68 Chinese companies were listed on the International Main Market of London Stock Exchange when all such 6 companies were incorporated in China; the other 62 companies were listed on the Alternative Investment Market (AIM) of London Stock Exchange, which is London Stock Exchange's international market for smaller growing companies. These 62 companies listed on AIM were incorporated in various countries including Australia, Bermuda, British Virgin Islands, Cayman Islands, Hong Kong, Republic of Ireland, the United Kingdom and the United States. Further, only 2 of the 62 companies were operated in Hong Kong, while the operation of all other 60 companies was in Mainland China. For information about the listing regime of London Stock Exchange, i.e. Premium (formerly Primary) Listing, Standard (formerly Secondary) Listing and AIM comparison, see London Stock Exchange, Main Market, Companies: Listing Regime, available at: <http://www.londonstockexchange.com/companies-and-advisors/main-market/companies/primary-and-secondary-listing/listing-categories.htm>, accessed April 2, 2012.

³⁰⁷ Chalco stands for Aluminum Corporation of China Limited.

cross-listing or triple-listing, in other words floating their shares on two or even three stock exchanges simultaneously.³⁰⁸

³⁰⁸ There are many examples, such as the cross-listing of Agricultural Bank of China on Hong Kong Stock Exchange (HKEx) and Shanghai Stock Exchange (SSE), or the triple-listing of Industrial and Commercial Bank of China Ltd. (ICBC) on HKEx, SSE and U.S. Over-the-Counter (OTC) Pink market; the statistics of China's cross-listed and triple-listed companies is omitted in this thesis, as the emphasis of this study is NOT on the difference between overseas listing and cross-listing; besides, whether the overall quality of corporate governance of China's cross-listed companies is better than that of non-cross-listed companies is still open to debate, see Chen, Shaw; Lin, Bing-Xuan; Wang, Yaping and Wu, Liansheng, "Cross-listing, Corporate Governance and Operating Performance - Evidence from The Chinese Market", in *Advances in Business and Management Forecasting Vol. 5*, Lawrence, Kenneth D. and Geurts, Michael D. edited, Elsevier, Oxford, 2008, p. 19.

Table 4.1 Criteria Adopted by this Research for the Selection of Case-studied Samples

Criteria	Standard
Market capitalisation of the listed company	Large and mega capitalisation are preferable
Number of employees	Larger number of employees is preferable
Date of overseas listing	Earlier listing date is preferable
State Owned Enterprise or private company	State Owned Enterprise is preferable
Attributes of the sector	Sectors with higher state presence is preferable
	Sectors with higher asset intensity are preferable
Cross-listing (triple-listing)	Cross-listing (triple-listing) is preferable

The criteria adopted by this research for the selection of empirical case-studied samples have been compiled into Table 4.1 above. In the first instance, market capitalisation has been used as a major criterion for the selection of overseas listed Chinese company samples. As shown in Appendix lists, the market capitalisations of these Chinese companies listed on the NYSE Euronext, NASDAQ, HKEx and LSE stock exchanges are expressed in descending numerical order.

Market capitalisation represents the total value of the tradable shares of a public company, and it is equal to the total number of outstanding shares times the current share price. In general, market capitalisation can be used as an indicator for the net worth of the listed company, but it can only be considered as an approximate proxy since it is just a rough market estimate of a company's value at the time of calculation. Nevertheless, market capitalisation does represent the relatively

reasonable valuation of the company in any given period as it can mostly reflect the listed company's tangible assets as well as the future expected prospects.³⁰⁹

Apart from market capitalisation, the total number of employees of the company is also adopted as a criterion when selecting the empirical study cases. The number of employees generally can serve as a useful proxy to measure the size of a company, although it might correlate to the specific business nature of the company as well as some other factors. In the main, large companies should have a large number of full-time employees.³¹⁰

The overseas listing date of these Chinese companies is another important consideration. When a Chinese company had only been listed on the foreign stock exchanges for five or less years, it would be difficult to assess if the corporate governance of such a company would have been substantially affected by the governance regime of these better-regulated markets. Thus, the Chinese companies that had been listed overseas for more than ten years became priority cases in this research, while those Chinese companies that had accomplished their off-shore listing after 2005 were all avoided.

Although China's government alleges that Mainland China has undergone the

³⁰⁹ Windsor, Duane, "Shareholder Wealth Maximization", in *Finance Ethics: Critical Issues in Theory and Practice*, Boatright, John R. (edited), John Wiley & Sons, Hoboken, New Jersey, 2010, p. 440.

³¹⁰ This is based on the grounds that the officially reported employees figures of these overseas listed China's companies are basically accurate and that the majority of their employees are full-time employees; for more information about the measures of company size, see Hart, Peter E. and Oulton, Nicholas, "Growth and Size of Firms", *The Economic Journal*, Vol. 106, No. 438, 1996, p. 1243.

transition from command economy to a market economy, there is no denying that China's state still plays a dominant role in China's economy. Indeed, the share of China's SOEs has shrunk in some sectors such as manufacturing in recent years. However, the level of Chinese state control is predominant in most important industrial sectors, such as car manufacturing, banking, public transportation, steel and telecommunications.³¹¹ Significantly, SOEs continue to maintain total supremacy over their non-state-owned rivals in sectors that have been defined as "strategically vital" by China's government, such as civil aviation, defence, energy and natural resources.

Undoubtedly, the definition of private sector is ambiguous to a certain degree in China,³¹² as it is always controversial whether Collectively Owned Enterprises (COEs) and Township and Village Enterprises (TVEs) can be classified as non-state. However, China's state does maintain substantial equity interests in COEs and TVEs, and these enterprises are under the close control of China's government in most instances.³¹³ Furthermore, the fact that China's state sector has been expanding rapidly in recent years is not insignificant either, since this is at the expense of the

³¹¹ It is said that China's SOEs held more than 30 per cent of the total assets of the secondary sector (i.e. construction and production) and tertiary sector (i.e. service), and over 50 per cent of total industrial assets by 2008, see Xu, Gao, "State-Owned Enterprises in China: How Big Are They?", *World Bank Blogs*, January 19, 2010, available at: <http://blogs.worldbank.org/eastasiapacific/state-owned-enterprises-in-china-how-big-are-they>, accessed May 1, 2012; see also Pei, Minxin, "The Dark Side of China's Rise", *Foreign Policy*, February 17, 2006, available at: http://www.foreignpolicy.com/articles/2006/02/17/the_dark_side_of_chinas_rise, accessed May 1, 2012.

³¹² Haggard, Stephan and Huang, Yasheng, "The Political Economy of Private-Sector Development in China", in *China's Great Economic Transformation*, Brandt, Loren and Rawski, Thomas G. edited, Cambridge University Press, Cambridge, 2008, pp. 340-341.

³¹³ Bai, Chong-En; Li, David D. and Wang, Yijiang, "Thriving on A Tilted Playing Field", in *How Far Across the River? Chinese Policy Reform at the Millennium*, Hope, Nicholas C.; Yang, Dennis Tao and Li, Mu Yang edited, Stanford University Press, Stanford, 2003, p. 99.

once-flourishing private sector to some extent.³¹⁴

When taking the foregoing various variables into account, it seems that non-state sector³¹⁵ can only play a subordinate role in China's economy, and China's economic policy always slants towards privileging these state-backed SOEs. Hence China's overseas listed major SOEs take precedence over other private Mainland's companies for the case-studied samples selection in this research, as their governance structure and business operation could more accurately reflect the economic policy and measures of China's state. In fact, SASAC always keeps ascendancy in the corporate governance practices of most of China's SOEs, since it holds the Chinese government's shareholding in almost all of the Mainland's public SOEs.³¹⁶

When the scope and space of this research does not permit me to gather a comprehensive sample that will provide a large number of overseas listed China's companies across all industrial sectors, the weight of the industrial sectors' selection is not to be taken lightly. The main objective of the sectors' selection in this research is to allow a representative sample of overseas listed Chinese companies to be covered.

³¹⁴ See Wines, Michael, "China Fortifies State Businesses to Fuel Growth", *The New York Times*, August 29, 2010, available at: http://www.nytimes.com/2010/08/30/world/asia/30china.html?_r=1&hp, accessed May 2, 2012.

³¹⁵ "Non-state sector" has been used as an interchangeable term with "private sector".

³¹⁶ China's Ministry of Finance holds shareholding on behalf of China's government in Mainland's public SOEs of finance sector; see Mattlin, Mikael, "Chinese Strategic State-Owned Enterprises and Ownership Control", *Brussels Institute of Contemporary China Studies Asia Paper*, Vol. 4, No. 6, 2009, p. 8, available at: <http://www.vub.ac.be/biccs/site/index.php?id=23>, accessed May 4, 2012.

As state control is still the keynote of the China's economy, the level of the Chinese state's presence cannot be ignored in most important industrial sectors. Thus, this research adopts selection criteria which are more inclined to choose these industrial sectors with higher Chinese state presence, as the institutional environments of such sectors and individual overseas listed Chinese company's level of autonomy in such sectors may be affected by China's government, either directly or indirectly.³¹⁷

Besides, asset intensity is also one of the major parameters for the selection of sectors in this study. The term "asset intensity" generally refers to "the dollar amount of assets necessary to support a dollar of revenue".³¹⁸ Where asset intensity is a widely used variable in economics, it can be simply interpreted in this research as companies in these sectors with higher asset intensity generally which need larger amounts of capital to maintain production at constant levels so as to generate a profit. According to Williamson's theory, the greater the amount of capital invested in the contractual relationship by two involved parties, the greater are the continuity properties of such contractual relationships.³¹⁹ This theory has been extensively applied by several other scholars to institutional environments within China's industries, which indicates that these asset-intensive industrial sectors of China will

³¹⁷ Guthrie, Doug, *Dragon in A Three-Piece Suit: The Emergence of Capitalism in China*, Princeton University Press, Princeton, New Jersey, 1999, p. 225.

³¹⁸ For more information about the definition of asset intensity and ways of calculating asset intensity, see Leach, J Chris and Melicher, Ronald W, *Entrepreneurial Finance*, South-Western Cengage Learning, Mason, Ohio, 2012, p. 57; also Golis, Christopher C.; Mooney, Patrick D. and Richardson, Thomas F., *Enterprise and Venture Capital*, Allen & Unwin, Crows Nest, 2009, p. 43.

³¹⁹ Williamson, Oliver E., *Economic Organization: Firms, Markets, and Policy Control*, New York University Press, New York, 1986, p. 142.

probably have more stable institutional environments than asset non-intensive sectors, while China's companies in such asset intensive sectors can operate accordingly in a more predictable way.³²⁰

Thus, those Chinese companies in the energy, infrastructure and telecommunications sectors were given priority in the selection of case study samples for this study, as the asset intensity of these sectors is stronger than that of industries concerned with garments, the internet and retailing sectors. It is theoretically possible that the corporate governance practices of such Chinese companies should be remarkably sure-footed, since the better institutional environments of these asset-intensive sectors could facilitate their management and operation. Efforts were made to collect relevant data of industrial sectors from the China Statistical Yearbook,³²¹ and a simplified method was used to determine the level of asset intensity of these sectors. In addition, preliminary telephone surveys were attempted with several economic experts such as Mr K (Interviewee No.11), so as to verify the asset intensity of the industrial sectors in China.

Furthermore, cross-listing (or triple-listing) was employed as a gauge during the selection of case-studied samples. It is generally held that companies with a cross-listing in the U.S. have a higher valuation than non-cross-listed

³²⁰ Guthrie, Doug, *Dragon in A Three-Piece Suit: The Emergence of Capitalism in China*, Princeton University Press, Princeton, New Jersey, 1999, p. 224.

³²¹ National Bureau of Statistics of China, Annual Data, available at: <http://www.stats.gov.cn/english/statisticaldata/yearlydata/>, accessed May 13, 2012.

corporations.³²² Besides, cross-listed and triple-listed companies could arguably have better corporate governance practices since they are subject to the corporate governance standards of two or even three stock exchanges in different countries. Hence, preference has been given to Chinese companies with cross-listing or triple-listing in the empirical research of this study, considering that the corporate governance of such companies is most possibly influenced by foreign regulatory regimes.

As was stated earlier, the NYSE remained the most popular choice of overseas listing for most of China's major SOEs and large private companies. Furthermore, the international financial centre status and desirable geographical location of Hong Kong had a powerful magnetising effect on the Mainland's companies. Thus, 242 of the Mainland's companies had listed on the HKEx by the end of 2008 (6 of these companies were suspended), resulting in the HKEx ranking highly among all foreign stock exchanges in terms of the quantity of listed Mainland companies. By comparison, the majority of the Chinese companies listed on the NASDAQ were emergent high technology companies with comparatively short listing spans, generally no more than ten years. Moreover, very few large Chinese SOEs decided to list on the LSE, while those private companies listed on the LSE could only attain small market capitalisations. As a matter of fact, many of the private Chinese companies in the Appendix List IV had been delisted from the LSE by the middle of

³²² Doidge, Craig; Karolyi, G. Andrew and Stulz, René M, "Why Are Foreign Firms Listed in the U.S. Worth More?", *Journal of Financial Economics*, Vol. 71, Issue 2, 2004, p. 205.

2012, which reveals that the operation of these small companies is not as stable as that of major Chinese SOEs.³²³

In light of the arguments presented above, this research shifted the emphasis towards those Chinese companies listed on the NYSE Euronext and HKEx. The comparatively larger size and longer listing span of these companies listed on the said two stock markets should arguably facilitate the empirical research, as it would be very difficult to examine the corporate governance implications of overseas listing on Chinese companies if the management and operation of the would-be company samples lacked stability and tangibility.

³²³ More than a third of the Chinese companies in Appendix List IV joined LSE in or after 2006, and thus their overseas listing span was no more than 3 years by the time of this study. Technically, many British investors have expressed concern over the corporate governance and management of these Chinese companies listed on LSE due to the growing delisting and high-profile failures of such companies; see MacLellan, Kylie, "Governance Key for China's London IPO Hopefuls", *Reuters*, March 14, 2012, available at: <http://uk.reuters.com/article/2012/03/14/ipo-london-china-idUKL5E8E8A2220120314>, accessed May 16, 2012.

Table 4.2 Top 15 Chinese Companies Listed on the New York Stock Exchange (NYSE)
(rated according to their market capitalisation)

Ranking	English Name of Company	Ticker Symbol	Listed Stock Exchange	Market Capitalisation (descending US\$)*	Listing Date
1	China Mobile Limited (China Mobile)	CHL	NYSE	\$4,817,311,590	22 Oct 1997 (IPO) (ADR)
2	PetroChina Company Limited	PTR	NYSE	\$1,627,920,000	06 Apr 2000 (IPO) (ADR)
3	New Oriental Education & Technology Group Inc. (New Oriental)	EDU	NYSE	\$1,268,276,800	07 Sep 2006 (IPO)
4	Mindray Medical International Limited	MR	NYSE	\$1,175,235,880	26 Sep 2006 (IPO) (ADR)
5	China National Offshore Oil Corporation (CNOOC) Limited	CEO	NYSE	\$1,070,926,260	27 Feb 2001 (IPO) (ADR)
6	China Life Insurance Company	LFC	NYSE	\$1,062,736,030	17 Dec 2003 (IPO) (ADR)
7	Suntech Power Holdings Co., Ltd. (Suntech)	STP	NYSE	\$769,881,600	14 Dec 2005 (IPO) (ADR)
8	Giant Interactive Group Inc.	GA	NYSE	\$741,124,670	01 Nov 2007 (IPO)
9	China Petroleum and Chemical Corporation (Sinopec)	SNP	NYSE	\$725,462,100	18 Oct 2000 (IPO) (ADR)
10	LDK Solar Co., Ltd.	LDK	NYSE	\$564,536,850	01 Jun 2007 (IPO) (ADR)

11	Huaneng Power International, Inc.	HNP	NYSE	\$511,838,780	06 Oct 1994 (IPO) (ADR)
12	China Unicom Limited	CHU	NYSE	\$466,087,750	21 Jun 2000 (IPO) (ADR)
13	American Oriental Bioengineering, Inc.	AOB	NYSE	\$446,019,300	18 Dec 2006
14	Longtop Financial Technologies Limited	LFT	NYSE	\$436,778,480	24 Oct 2007 (IPO) (ADR)
15	Aluminum Corporation of China Limited (Chalco)	ACH	NYSE	\$314,607,930	11 Dec 2001 (ADR)

Source: data collected from the official website of New York Stock Exchange and NASDAQ in October 2008³²⁴

* The market capitalisation of the Chinese companies showed in this table was considerably smaller than the official figures issued by China's government, since the NYSE and NASDAQ probably adjusted for this by calculating on a free float basis, i.e., the market capitalisation that the NYSE and NASDAQ used is the value of the publicly tradable part of the company.

Note: China Netcom, full name China Netcom Group Corporation (Hong Kong) Limited (former stock codes: HKEX:0906, NYSE:CN), abbreviated CNC, has been removed from this list, since it was merged with China United Netcom (Hong Kong) Ltd. (China Unicom) on 6 October 2008. After China Netcom became a wholly owned subsidiary of China Unicom, the listings of its shares on the HKEx and its American Depositary Receipt Shares on the NYSE were withdrawn.³²⁵

³²⁴ See New York Stock Exchange Euronext, Listings Directory, available at: http://www.nyse.com/about/listed/lc_all_overview.html, accessed October 27, 2008.

³²⁵ See Xinhua News Agency, "China Netcom Removed from Hang Seng Index Constituent After Merger", October 6, 2008, available at: http://news.xinhuanet.com/english/2008-10/06/content_10156603.htm, accessed March 17, 2012.

Appendix List I shows all the Chinese companies listed on the NYSE by October of 2008, while the top 15 companies among them in terms of market capitalisation have been compiled into Table 4.2 in descending order.

According to Table 4.2, China Mobile Limited took the market capitalisation crown from the Mainland's oil-services giant, PetroChina Company Limited, with a significant advantage. China Mobile Limited is a Mainland telecommunications SOE having over 160,000 employees,³²⁶ and was listed on the NYSE as early as 1997. In addition to the overseas listing on the NYSE, China Mobile Limited also lists its equity shares on the HKEx. The telecommunications industry of the Mainland is almost completely dominated by the state. Technically, the asset intensity of the telecommunications sector is naturally higher than that of other sectors, largely due to the considerable capital expenditure involved in building infrastructure. Furthermore, the investment recovery periods of the telecommunications industry tend to be longer than in many other industries. Hence, China Mobile Limited fulfils all the criteria for being selected as a case-studied sample of this research.

PetroChina Company Limited, which has a market capitalisation of US\$ 1,627,920,000, closely follows China Mobile Limited in Table 4.2. PetroChina Company Limited is a large oil services SOE with over 550,000 employees,³²⁷

³²⁶ See Hoovers, Key China Mobile Limited Financials, available at: http://www.hoovers.com/company/China_Mobile_Limited/hxcji-1-1njea5.html, accessed May 21, 2012.

³²⁷ See Financial Times, Markets Data, PetroChina Company Limited, Business Profile, available at: <http://markets.ft.com/Research/Markets/Tearsheets/Business-profile?s=601857:SHH>, accessed May 21, 2012.

which launched its Initial Public Offering (IPO) on the NYSE in 2000. Furthermore, the listing of PetroChina Company Limited on the HKEx and SSE has made it a triple-listed company. The oil and gas sector has been defined as a strategically vital sector by China's government, with the state always playing a central, directive role in this sector. While the oil and gas sector is basically asset intensive, it involves a high level of fixed investment and higher degree of risk. Therefore, PetroChina Company Limited was selected as a sample for the case studies of this research.

With New Oriental Education & Technology Group Inc. and Mindray Medical International Limited joining the NYSE in late 2006, they were not desirable choices for selection as case-studied samples, as their overseas listing span was scarcely two years by 2008. The market capitalisation of China National Offshore Oil Corporation (CNOOC) Limited is ranked fifth in Table 4.2. CNOOC Limited is the major investment holding subsidiary of China National Offshore Oil Corporation, which is the third-largest National Oil Company (NOC) in Mainland China. CNOOC Limited employs more than 5,300 employees,³²⁸ and was cross-listed on the NYSE and HKEx in 2001. With the petroleum industry of the Mainland tightly controlled by China's state, CNOOC Limited is actually a Chinese SOE in an asset intensive sector. Hence, CNOOC Limited became the last sample that was listed on NYSE and included in the case studies.

³²⁸ See Financial Times, Markets Data, China National Offshore Oil Corporation (CNOOC) Limited, Business Profile, available at: <http://markets.ft.com/Research/Markets/Tearsheets/Business-profile?s=883:HKG>, accessed May 23, 2012.

Table 4.3 Top 15 Chinese Companies Listed on the Hong Kong Stock Exchange (HKEx)
(rated according to their market capitalisation)

Ranking	English Name of Company	Stock Code	Listed Stock Exchange	Market Capitalisation (HK\$ descending)	Listing Date	Type
1	China Mobile Limited Company	00941	HKEx Main Board	1,359,476,863,733	23 Oct 1997	Red Chip Companies*
2	China Construction Bank Corporation	00939	HKEx Main Board	831,349,610,800	27 Oct 2005	H Share Companies*
3	Industrial and Commercial Bank of China Limited	01398	HKEx Main Board	294,020,016,945	27 Oct 2006	H Share Companies
4	China National Offshore Oil Corporation (CNOOC) Limited	00883	HKEx Main Board	281,415,959,899	28 Feb 2001	Red Chip Companies
5	Bank of China Limited	03988	HKEx Main Board	168,004,755,304	01 Jun 2006	H Share Companies
6	China Life Insurance Company Limited	02628	HKEx Main Board	151,427,911,250	18 Dec 2003	H Share Companies
7	China Unicom (Hong Kong) Limited	00762	HKEx Main Board	150,314,471,395	22 Jun 2000	Red Chip Companies
8	PetroChina Company Limited	00857	HKEx Main Board	120,263,730,000	07 Apr 2000	H Share Companies
9	Bank of Communications Company Limited	03328	HKEx Main Board	101,944,949,161	23 Jun 2005	H Share Companies
10	Bank of China Hong Kong (Holdings) Limited	02388	HKEx Main Board	90,714,454,682	25 Jul 2002	Red Chip Companies
11	China Petroleum & Chemical Corporation Limited	00386	HKEx Main Board	84,405,854,640	19 Oct 2000	H Share Companies
12	Ping An Insurance (Group) Company of China Limited	02318	HKEx Main Board	81,876,598,336	24 Jun 2004	H Share Companies
13	China Overseas Land & Investment Limited	00688	HKEx Main Board	66,567,247,103	20 Aug 1992	Red Chip Companies
14	China Resources Power Holdings Company Limited	00836	HKEx Main Board	60,227,954,874	12 Nov 2003	Red Chip Companies
15	China Shenhua Energy Company Limited	01088	HKEx Main Board	47,580,155,000	15 Jun 2005	H Share Companies

Source: data collected from the official website of the Hong Kong Stock Exchange in October 2008³²⁹

³²⁹ See Hong Kong Stock Exchange, Statistics & Research, Securities Market Statistics: China Dimension, available at: <http://www.hkex.com.hk/eng/stat/smstat/chidimen/chidimen.htm>, accessed October

* Note: According to the definition given by the HKEx, H-share companies are companies incorporated in Mainland China and whose listings in Hong Kong are approved by the China Securities Regulatory Commission (CSRC). Shares of H-share companies are listed in Hong Kong, subscribed for and traded in Hong Kong dollars or other currencies. The letter H stands for Hong Kong. By contrast, Red chip companies are enterprises that are incorporated outside of the Mainland and are controlled by Mainland governmental entities. The most important difference between a red chip company and an H-share company is that a red chip company is not Mainland-incorporated.³³⁰

27, 2008.

³³⁰ See Hong Kong Stock Exchange, Frequently Asked Questions, Chapter 3: 3.5, available at: <http://www.hkex.com.hk/eng/global/faq/hkex%20markets.htm>, accessed October 27, 2008.

Appendix List II shows all Chinese companies listed on the HKEx by October of 2008, while the top 15 companies among them measured by market capitalisation have been compiled into Table 4.3 above in descending order.

In these companies, the top-ranked China Mobile Limited, fourth-ranked China National Offshore Oil Corporation (CNOOC) Limited and eighth-ranked PetroChina Company Limited were selected as the samples that listed on the NYSE for case studies, as they were cross-listed.

The second-ranked China Construction Bank Corporation, third-ranked Industrial and Commercial Bank of China Limited, fifth-ranked Bank of China Limited and ninth-ranked Bank of Communications Company Limited were excluded from the case studies since they all joined the HKEx after 2005, which indicated in 2008 that their overseas listing span was quite short. The China Life Insurance Company Limited ranks sixth in this list, but it was not selected as a sample since its overseas listing span was only 5 years in 2008. While the tenth-ranked Bank of China Hong Kong (Holdings) Limited was listed on HKEx in 2002, it was also removed from the case studies, as an overseas listing span of 6 years could not be considered as sufficient.

It was theoretically possible for China Unicom (Hong Kong) Limited, which is ranked seventh in Table 4.3, to have been selected as a sample for case studies, as it

had been listed on the HKEx as early as 2000. Nonetheless, China Unicom (Hong Kong) Limited was ruled out of the case studies in this research since it is a red chip company rather than an H share company.

When red chip companies³³¹ are incorporated outside Mainland China, their actual business and assets have a strong Mainland orientation. Although almost all red chip companies are controlled, either directly or indirectly, by various Mainland governmental entities, they are not regulated by the Mainland's law from a strictly legal point of view. As H share companies are incorporated in Mainland China, they are still regulated by the Mainland's law. The most important difference between a red chip company and an H share company is that all of the shares in issue in a red chip company are normally tradable, since non-Mainland incorporated red chip companies are not subject to the segmentation of share capital as in H share companies.

Hence, this research gave top priority to H share companies rather than red chip companies in the HKEx case studies, as the prime objective of this research is to examine whether the corporate governance of these Chinese companies governed by the Mainland's regulatory system have been affected by their overseas listings.

In Table 4.3, the eleventh-ranked China Petroleum & Chemical Corporation Limited

³³¹ The word "red" represents the Chinese Communist Party; the term "red chip" is not an official or legal stock category and it was coined by Hong Kong economist Alex Tang, who is the Head of Research of Core Pacific - Yamaichi International (H.K.) Limited, in 1992.

(Sinopec Limited) is a Mainland state-owned oil and gas company based in Beijing, which had over 370,000 employees.³³² Sinopec Limited was simultaneously listed on the HKEx, NYSE and LSE in late 2000, and was floated on the SSE in 2001. China Petrochemical Corporation Group (Sinopec Group), which is the parent company of Sinopec Limited, is one of the major petroleum companies on the Mainland. With the oil and gas sector an asset intensive sector with very high state presence in Mainland China, Sinopec Limited is a major downstream oil Chinese SOE.³³³ Thus, Sinopec Limited was suitably qualified for being selected as a sample for the HKEx case studies.

Sinopec Limited is followed by the Ping An Insurance (Group) Company of China Limited (Ping An) in Table 4.3, which was the first insurance company in China to have a shareholding structure. With Ping An established in Shenzhen in 1988, it has developed into an integrated financial services conglomerate with 175,136 employees.³³⁴ Although the insurance business is the traditional core business of Ping An, the company has diversified into financial services including asset management, commercial banking, investment and securities brokerage since the middle 1990s. Ping An was listed on the HKEx in June 2004, and it was further floated on the SSE three years later. In view of the comparatively short overseas

³³² See Financial Times, Markets Data, China Petroleum & Chemical Corporation Limited, Business Profile, available at: <http://markets.ft.com/Research/Markets/Tearsheets/Business-profile?s=600028:SHH>, accessed May 28, 2012.

³³³ See Arul, Arun, "Quick Facts: PetroChina vs. SNP and CEO", *Chinavestor*, September 26, 2009, available at: <http://www.chinavestor.com/index.php/knowledge-base/adr-market/70972-quick-facts-petrochina-vs-snp-and-ceo.html>, accessed May 28, 2012.

³³⁴ See Hoovers, Ping An Insurance (Group) Company of China, Ltd., Overview: Financials, available at: http://www.hoovers.com/company/Ping_An_Insurance_%28Group%29_Company_of_China_Ltd/ryxytsi-1-1njht4-1njfaq.html, accessed May 31, 2012.

listing span, Ping An was potentially an undesirable sample for the case studies. Nevertheless, Ping An was the first nationwide financial holding group company in China, and it was also the first Chinese enterprise to introduce significant foreign investment into the Mainland's finance and insurance industry. Thus, Ping An can be considered as a representative sample of China's integrated financial services conglomerate. With both the asset intensity and state presence in the finance and insurance sector very high in Mainland China, the majority of the top ten shareholders of Ping An are actually either directly or indirectly in the control of China's government. Significantly, some of China's most influential political leaders and their next of kin had played a vital role in the H-share listing of Ping An, by all accounts.³³⁵ Hence, Ping An was selected as a sample for the case studies of this research, largely for the sake of examining the contribution of political factors to the corporate governance of China's overseas listed companies.

The last H-share company that was selected as a sample for the HKEx case studies was Tsingtao Brewery Company Limited (Tsingtao Brewery), even though its market capitalisation was not large enough to be ranked in the Top 15 companies of Table 4.3. Tsingtao Brewery was founded by German settlers in 1903, and turned into an SOE by nationalisation in 1949. It has now developed into China's second largest brewery with over 37,000 employees.³³⁶ Tsingtao Brewery was listed on the

³³⁵ Chan, John, "Corruption Scandal Signals Sharp Differences in Chinese Ruling Elite", *World Socialist Web Site*, August 3, 2004, available at: <http://www.wsws.org/articles/2004/aug2004/chin-a03.shtml>, accessed June 6, 2012.

³³⁶ See Financial Times, Markets Data, Tsingtao Brewery Company Limited, Business Profile, available at: <http://markets.ft.com/Research/Markets/Tearsheets/Business-profile?s=600600:SHH>, accessed June 6, 2012.

HKEx as an H-share company in July 1993, and was also floated on the SSE in the same year. Besides, Tsingtao Brewery is also listed on the OTC Pink market. Technically, Tsingtao Brewery has been regarded as the first H-share company listed on the HKEx. Furthermore, Tsingtao Brewery is also one of the first of China's SOEs to try to conduct privatisation, as well as one of the earliest Chinese SOEs that entered into a strategic investment agreement with foreign investors.³³⁷ In early 2009, Asahi Breweries acquired 19.9 per cent of Tsingtao Brewery's outstanding capital from Anheuser-Busch InBev, making Asahi Breweries the second largest shareholder of Tsingtao Brewery behind only the Tsingtao Brewery Group itself, which is a holding company owned by the Qingdao government.³³⁸ The inference that can be drawn from these facts is that Tsingtao Brewery is still an SOE controlled by China's government, but foreign investors will arguably play a functional role in the corporate governance and management of the brewery. Basically, the asset intensity and state presence of foods sector cannot be deemed as high. Nonetheless, Tsingtao Brewery was still selected as a sample for the case studies, since it had been listed on the HKEx for about 20 years. The long overseas listing span of Tsingtao Brewery would help to examine whether foreign listing had improved some aspects of the corporate governance of China's companies or not. Moreover, it was more than likely that the governance practices of Tsingtao Brewery conformed to international standards, as it had more foreign strategic investors than other ordinary

³³⁷ Nolan, Peter, *Integrating China: Towards the Coordinated Market Economy*, Anthem Press, London, 2008, p. 58.

³³⁸ Tsingtao Brewery Group remains the largest shareholder of Tsingtao Brewery with a 30 per cent shareholding; see Ding, Qingfen, "Chen Eye May Prove Frothy for Tsingtao", *China Daily*, May 14, 2009, available at: http://www.chinadaily.com.cn/bizchina/2009-05/14/content_7775700.htm, accessed June 7, 2012.

Chinese SOEs.

CHAPTER 5. LEGAL FRAMEWORK OF OFF-SHORE LISTINGS FOR MAINLAND CORPORATIONS

The overseas listing of Mainland-based companies has always been deemed as an important element of modern financial markets by the Chinese government, thus there is a necessity to examine the regulatory framework of China's domestic financial markets before scrutinising China's legal framework of off-shore listings.

In the main, China's financial markets experienced quite heavy regulation and the strict control of the central government. Technically, several enforcement agencies and organs led by the State Council, together with their local branches, exercised the power of administration, legislation and supervision in the securities markets, which included the China Securities Regulatory Commission (CSRC), the Ministry of Finance (MOF), the People's Bank of China (PBOC) and the State-owned Assets Supervision and Administration Commission (SASAC).³³⁹

Unfortunately, the powers and functions of these administrative agencies had not been defined clearly in the early stages of development, and they relied heavily on a number of overlapping guidelines issued by the State Council for the performance of their duties.³⁴⁰ Basically, the PBOC and its local branches played an important part

³³⁹ Liu, Lisheng, "An Overview of China's Financial Markets", in *China's Financial Markets: An Insider's Guide to How the Markets Work*, Neftci, Salih N. and Menager-Xu, Michelle Yuan edited, Elsevier Academic Press, London, 2007, p. 32.

³⁴⁰ Su, Dongwei, *Chinese Stock Markets: A Research Handbook*, World Scientific Publishing Company, Singapore,

in security management during the prehistory of China's stock markets. Meanwhile, several macroeconomic management agencies under China's State Council such as the State Planning Commission (SPC), which was the predecessor of the National Development and Reform Commission (NDRC), could also exert strong influence on certain complex cases.

When the Shanghai and Shenzhen stock exchanges were launched in 1990 and 1991, respectively, no corresponding national regulatory authorities had been established. Thus, these stock exchanges were generally under the supervision of the local municipal governments at this stage.

In late 1992, the State Council finally reached a decision to establish the Security Committee of State Council as the main securities regulator of Mainland China. Meanwhile, the State Council also promoted a standing executive body for the Security Committee, the CSRC. Technically, this movement could be considered as an immediate aftermath of the storm of protests which occurred in Shenzhen during the summer of 1992. In July of 1992, the Shenzhen municipal government issued 5 million Initial Public Offering (IPO) application forms valued at RMB 500,000,000, with the investors who purchased these application forms having a 10 per cent chance of being approved to subscribe to the new shares.³⁴¹ However, only a fraction of the investors finally managed to gain the application forms, since most

2003, p. 33.

³⁴¹ LeBaron, Dean, *Mao, Marx, and the Market: Capitalist Adventures in Russia and China*, John Wiley & Sons, Inc., New York, 2002, p. 259.

had long since been appropriated by corrupt bank staff together with government officials.³⁴² The dissatisfaction among the investors soon permeated down to the general public, and serious disorder broke out on August 10, which became known as the 8.10 Riot. In fact, the 8.10 Riot became a turning point for the central government and led to reflection over the regulative structure of China's stock market. After several months of deliberation and self-analysis, the central government decided in favour of establishing a special agency that would be empowered to independently regulate the securities markets.

Nevertheless, the PBOC actually still assumed principal responsibility for the supervision of the securities and insurance business until late 1997, when China's central government instigated the institutional reform of the financial markets.³⁴³ The supervision was fully centralised in the CSRC as part of the financial reform in China's first National Financial Work Conference during November 1997.³⁴⁴ By April 1998, the Security Committee of State Council had been absorbed into the CSRC so as to form a new ministry-level regulatory body. The announcement of China's first Securities Law in late 1998 finally granted the CSRC the authority to implement the centralised regulation of China's securities and futures markets.³⁴⁵

³⁴² Green, Stephen, *China's Stock Market: A Guide to its Progress, Players and Prospects*, Bloomberg Press, London, 2003, p. 14.

³⁴³ Laurenceson, James and Chai, Joseph C. H., *Financial Reform and Economic Development in China*, Edward Elgar Publishing, Cheltenham, 2003, p. 19.

³⁴⁴ China's National Financial Work Conference has been convened by the central authorities every five years since 1997, and it was widely deemed as strategically important for China's financial reform; see Xinhua News Agency, "China Focus: China Ends Financial Meeting, Urges Serving Real Economy Amid Risks", January 7, 2012, available at: http://news.xinhuanet.com/english/china/2012-01/07/c_131347969.htm, accessed April 23, 2012.

³⁴⁵ People's Republic of China, *Securities Law of the People's Republic of China* (1998 Order No.12 of the President of the People's Republic of China), Article 166, adopted at the 6th Meeting of the Standing Committee of the 9th National People's Congress of the People's Republic of China on December 29, 1998, and effective as

Besides, Article 238 Securities Law (2005 revision) reiterated that all PRC enterprises that directly or indirectly issued any securities abroad were subject to the approval of the securities regulatory body of the State Council, which was the CSRC.³⁴⁶

When trying to scrutinise the legal framework of overseas listing for Mainland companies, there is a necessity to first review the laws and regulations of Mainland China that have governed overseas listing.

I. THE LAWS AND REGULATIONS OF MAINLAND CHINA GOVERNING OVERSEAS LISTING

The earliest official legislation of off-shore listing for the Mainland's companies can be traced to Article 85 of the 1993 Company Law of China, which mandates that “with the approval of the securities administration of the State Council, a joint stock limited company may make a rally abroad. The specific method for the rally shall be formulated by the State Council”.³⁴⁷ However, the State Council did not immediately formulate any regulation for off-shore listing after the announcement of

of July 1, 1999, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=1084>, accessed September 21, 2012.

³⁴⁶ People's Republic of China, *Securities Law of the People's Republic of China* (2005 Order No.43 of the President of the People's Republic of China), Article 238, amended and adopted at the 18th Meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://en.pkulaw.cn/display.aspx?cgid=60599&lib=law>, accessed October 6, 2012.

³⁴⁷ People's Republic of China, *Company Law of the People's Republic of China* (1993 Order No.16 of the President of the People's Republic of China), Article 85, adopted at the 5th Session of the Standing Committee of the 8th National People's Congress on December 29, 1993, and effective as of July 1, 1994, available at: <http://www.lawinfochina.com/display.aspx?id=641&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%BB%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

the 1993 Company Law, possibly because overseas listing was still uncharted territory for China at that time.

In fact, the State Council and CSRC had issued some Circulars and Notices concerning the overseas listing of Chinese companies before the enactment of the 1993 Company Law. Article 4 of the *Notice of the State Council on Further Enhancing the Macro-control of the Securities Market*³⁴⁸ stipulates that the overseas listing of China's companies is subject to approval by the Security Committee of State Council.

On April 9, 1993, the CSRC provided a report to the Security Committee of State Council, in which the CSRC defined its position on the issue of the overseas listing of China's companies. This report can be termed as one of the most significant regulations issued by the Chinese government, since it enumerated the four major direct and indirect ways that had been adopted by China's companies to make an overseas listing or share issue, which included:

1. Chinese companies directly make a listing or share issue on foreign stock exchanges.
2. Chinese companies indirectly make a listing or share issue on foreign stock exchanges through an offshore company that has been set up as a listing vehicle.
3. Chinese listed companies directly make a listing or share issue on foreign stock

³⁴⁸ People's Republic of China, *Notice of the State Council on Further Enhancing the Macro-control of the Securities Market* (1992 Order No.68 of the State Council of the People's Republic of China), promulgated by the State Council of the People's Republic of China on, and effective as of December 17, 1992.

exchanges.

4. Chinese listed companies directly issue Depository Receipts (DR) or other stock derivatives on foreign stock exchanges.³⁴⁹

In this report, the CSRC iterated that no Chinese company should make an overseas listing or share issue through any direct or indirect means without prior approval of the Security Committee of State Council.

Shortly afterwards, the State Council enacted the *Interim Provisions on the Management of the Issuing and Trading of Stocks*, and Article 6 of this regulation prescribed that all Chinese enterprises must obtain approval from the Security Committee of State Council before issuing shares abroad, regardless of whether the foreign listing would be accomplished in a direct or indirect manner. However, this regulation did not state any detailed measures for overseas listing,³⁵⁰ merely stating that the detailed measures would be formulated separately.

Following the announcement of the 1993 Company Law, the CSRC tried to take steps to tighten up the regulation of overseas listings of the Mainland's companies.

The CSRC issued a circular in 1994,³⁵¹ in which the CSRC noted that several

³⁴⁹ People's Republic of China, *Report on the Issues Existing in the Public Offering and Listing Abroad of Domestic Enterprises by China Securities Regulatory Commission* (1993 Order No.18 of the Security Committee of State Council of the People's Republic of China), promulgated by the Security Committee of State Council of the People's Republic of China on, and effective as of April 9, 1993.

³⁵⁰ People's Republic of China, *Interim Provisions on the Management of the Issuing and Trading of Stocks* (1993 Order No.112 of the State Council of the People's Republic of China), promulgated by the State Council of the People's Republic of China on, and effective as of April 22, 1993, available at: <http://www.lawinfochina.com/display.aspx?id=1334&lib=law&SearchKeyword=&SearchKeyword=%B9%C9%C6%B1%B7%A2%D0%D0%D3%EB%BD%BB%D2%D7%B9%DC%C0%ED%D4%DD%D0%D0%CC%F5%C0%FD>, accessed September 15, 2012.

³⁵¹ People's Republic of China, *Circular Concerning the Approval Procedure of the Issue and Listing of Shares*

companies, which were incorporated outside China³⁵² but owned or controlled by Mainland companies, were trying to float on foreign stock exchanges. Furthermore, several other Chinese companies had tried to list on foreign stock exchanges through reverse merger or other indirect approaches. The CSRC stated categorically that all such overseas listing related activities were under the jurisdiction of the Security Committee of State Council, and that all Mainland companies should submit their applications for overseas listings to the CSRC beforehand.

On August 4, 1994, the State Council of China enacted *Special Provisions of the State Council Concerning the Floatation and Listing Abroad of Stocks by Limited Stock Companies*,³⁵³ which could be considered as one of the earliest specific regulations issued by China's authority in regard to the overseas listing of Mainland companies. In this regulation, the State Council gave a precise definition of "listing abroad" for the first time.

In March 1997, the CSRC made a written response in reply to Shenzhen DaXin law firm on the issue concerning the indirect overseas listing of domestic companies.³⁵⁴

Outside China for China's Domestic Companies, issued by China Securities Regulatory Commission of the People's Republic of China on, and effective as of February 4, 1994.

³⁵² Here, China refers to Mainland China, excluding Hong Kong, Macau and Taiwan.

³⁵³ These Special Provisions were formulated according to Article 85 and Article 155 of 1993 China's Company Law; see

People's Republic of China, *Special Provisions of the State Council Concerning the Floatation and Listing Abroad of Stocks by Limited Stock Companies* (1994 Order No.160 of the State Council of the People's Republic of China), adopted at the 22nd executive meeting of the State Council of the People's Republic of China on, and effective as of August 4, 1994, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=707>, accessed April 26, 2012.

³⁵⁴ People's Republic of China, *The Response of China Securities Regulatory Commission On the Issues Concerning the Indirect Overseas Listing of Domestic Enterprises* (1997 Order No.1 of China Securities Regulatory Commission of the People's Republic of China), promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of March 17, 1997.

The CSRC highlighted quite positively in this document that both the direct and indirect overseas listing of domestic enterprises were subject to the approval of the Security Committee of State Council. Significantly, in this response the CSRC touched on the issue regarding which kind of legal responsibilities PRC law firms should take when they were trying to provide legal opinions for overseas listing.

a) The 1997 Red-chip Guidelines

The State Council of China finally promulgated the *Circular of the State Council Concerning Further Strengthening the Administration of Share Issuance and Listing Overseas* on June 20, 1997,³⁵⁵ in view of the Mainland companies' increasing preference to list themselves on foreign stock exchanges. The CSRC issued a further Notice as to how to implement the 1997 Red-chip Guidelines in early 1998,³⁵⁶ and this Notice precisely delineates the normal procedures of overseas listing application for Mainland companies.

As this Circular has been widely termed the 1997 Red-chip Guidelines, there is a necessity to initially clarify the definition of "Red-chip". As was mentioned earlier,

³⁵⁵ This Circular is widely known as "1997 Red-chip Guidelines"; see People's Republic of China, *Circular of the State Council Concerning Further Strengthening the Administration of Share Issuance And Listing Overseas* (1997 Order No.21 of the State Council of the People's Republic of China), promulgated by the State Council of the People's Republic of China on, and effective as of June 20, 1997, available at: <http://www.chinalawandpractice.com/Article/1937172/Channel/9846/State-Council-Further-Strengthening-Administration-of-the-Issue-and-Listing-of-Shares-Outside-China.html>, accessed April 26, 2012.

³⁵⁶ People's Republic of China, *Notice of China Securities Regulatory Commission Concerning the Implementation of the Circular of the State Council Concerning Further Strengthening the Administration of Share Issuance and Listing Overseas* (1998 Order No.5 of China Securities Regulatory Commission of the People's Republic of China), promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of February 27, 1998.

the definition of “Red Chip companies” by the Securities and Futures Commission (SFC) of Hong Kong and HKEx refers to companies which,

- “1. have at least 30% shareholding held in aggregate by Mainland China entities, and / or indirectly through companies controlled by them, with the Mainland China entities being the single largest shareholders in aggregate terms. Or;
2. if the shareholding of the company held in aggregate directly and / or indirectly by Mainland China entities is below 30% but is 20% or above and there is a strong influential presence, on a judgemental basis, of Mainland China-linked individuals on the company’s board of directors.”³⁵⁷

These criteria gathered strength in the subsequent years, and were adopted by the Hang Seng Indexes Company Limited to compile the Hang Seng China Enterprises Index.

By comparison, there was another important criterion of the Red Chip company, which was to establish whether the main business of the company was based in Mainland China. As this criterion had been used by only few financial data companies such as Bloomberg, the definition given by the SFC of Hong Kong and HKEx will be adopted in this thesis.

Another important term that was employed by the 1997 Red-chip Guidelines was

³⁵⁷ Mainland China entities include state-owned enterprises, and entities controlled by provincial and municipal authorities; see The Securities and Futures Commission (SFC) of Hong Kong, Published Resources, Market & Industry Statistics, Statistics by Topics: Table B2 Number of Newly Listed Companies by Stock Type, available at: <http://www.sfc.hk/web/EN/published-resources/market-and-industry-statistics/statistics-by-topics/>, accessed September 20, 2012.

“PRC-funded entities”. It seems that the State Council or CSRC had never clearly defined the exact meaning of “PRC-funded entities”. A number of senior lawyers coming from leading Chinese law firms suggested that the term “PRC-funded entities” might have distinct meanings in different Chinese regulations. Most Chinese lawyers held the view that “PRC-funded entities” referred to those enterprises funded by China’s government only in the 1997 Red-chip Guidelines.

When the definition of these important terms is understood correctly, there remains another significant issue, which is to ascertain which kinds of Chinese companies were covered by the 1997 Red-chip Guidelines. While the Mainland’s State-owned Enterprises (SOEs) inevitably fell within the scope of the 1997 Red-chip Guidelines, these Guidelines also applied to those overseas listed companies incorporated outside China but in which PRC-funded entities had a controlling interest. Besides, Article 3 of the 1997 Red-chip Guidelines especially provided that these Mainland’s companies, which exploited their own domestic assets to achieve overseas listing, should obtain prior approval from the CSRC. Furthermore, Article 4 of the 1997 Red-chip Guidelines actually prohibited Mainland companies from purchasing majority shareholdings of overseas listed companies, since some Mainland companies had sought to list on foreign stock exchanges by such a route.³⁵⁸

³⁵⁸ Article 4 of 1997 Red-chip Guidelines is actually a reiteration of a previous Notice issued by the State Council in 1993; see People’s Republic of China, *Notice of the State Council on Suspension of the Purchase of Overseas Enterprises and Further Strengthening the Administration of Overseas Investment* (1993 Order No.69 of the State Council of the People’s Republic of China), promulgated by the State Council of the People’s Republic of China on, and effective as of November 23, 1993.

It would appear that two different supervisory patterns had been applied to China's companies under the rules of the 1997 Red-chip Guidelines. For those offshore listed companies incorporated outside Mainland China, in which Chinese-funded entities had a controlling interest, they only had to officially report the relevant information to the CSRC when they engaged in activities such as spin-off listings and issues of additional shares. For those companies that tried to list offshore by exploiting their domestic assets, they had to receive advance approbation from the CSRC.

The 1997 Red-chip Guidelines can be deemed as the cardinal regulation enacted by the Chinese authorities that regulated the off-shore listing and related activities of Mainland companies in the 1990s. Significantly, the scope of the 1997 Red-chip Guidelines was involved in ambiguity to the extent that it was unclear whether it regulated these Mainland companies under private ownership,³⁵⁹ or not. Such ambiguity presumably is due largely to the fact that the vast majority of these Mainland companies under private ownership seemed to be incapable of reaching the required listing standards of major foreign stock exchanges before 1997.

b) Other Laws and Regulations Governing Overseas Listing

In mid-1999, the *Securities Law of The People's Republic of China* became effective.³⁶⁰ According to Article 2 of this law, Chinese companies must obtain the

³⁵⁹ "Mainland's companies under private ownership" refer to these Mainland's companies directly or indirectly owned by Mainland private companies or individuals rather than China's government.

³⁶⁰ People's Republic of China, *Securities Law of the People's Republic of China* (1998 Order No.12 of the

approval of the CSRC when they are seeking to directly or indirectly list their securities outside China. As the 1999 Securities Law accorded the CSRC wide-ranging powers over administrative regulations of securities,³⁶¹ Article 29 was probably the highest-level legislation in the hierarchy of China's laws regarding offshore listing. Unfortunately, Article 29 had rarely been referred to in practical administration by the CSRC, and the source of the problem resided in the fact that the stipulation of Article 29 was far too abstract to be applied in practice.

In July 1999, the CSRC issued the *Relevant Questions Concerning Enterprises' Application for Overseas Listing Circular*, through which the CSRC officially stated the compulsory minimum requirements for filing overseas listing application for the first time.³⁶² It was made clear that this Circular applied to all Chinese companies, including SOEs, collectively owned enterprises and private joint-stock companies. Technically, Article 1 of this Circular listed the requirements that China's companies must satisfy before submitting their overseas listing applications, which included:

1. The company should have minimum net assets of RMB 400,000,000 (US\$ 63,240,106), with an amount of after-tax net profits of not less than RMB 60,000,000 (US\$ 9,486,016) in the last year.

President of the People's Republic of China), adopted at the 6th Meeting of the Standing Committee of the 9th National People's Congress of the People's Republic of China on December 29, 1998, and effective as of July 1, 1999, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=1084>, accessed September 21, 2012.

³⁶¹ Tomasic, Roman A. and Fu, Jian, "The Securities Law of the People's Republic of China: An Overview", *Australian Journal of Corporate Law*, Vol. 10, 1999, p. 274.

³⁶² People's Republic of China, *Relevant Questions Concerning Enterprises' Application for Overseas Listing Circular by China Securities Regulatory Commission* (1999 Order No.83 of China Securities Regulatory Commission of the People's Republic of China), promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of July 14, 1999, available at: <http://www.chinalawandpractice.com/Article/1886828/Channel/9952/China-Securities-Regulatory-Commission-Relevant-Questions-Concerning-Enterprises-Application-for.html>, accessed September 18, 2012.

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2. The total amount of the funds raised by the issuer should be no less than RMB 50,000,000 (US\$ 7,905,013), on the basis of a reasonable prospective Price to Earnings ratio (P/E).
 3. The company should have established a normative corporate governance structure and relatively sound internal administrative system; the company should also have a stable senior management team that has desirable management capacity.
 4. The company should have steady sources of foreign exchange for the payment of dividends and interests after the overseas listing, which should conform to China's regulations on foreign currency controls.³⁶³

In the late 1990s, leading Chinese SOEs and major collectively owned enterprises possibly had no difficulty in fulfilling the foregoing requirements set by the CSRC. However, most private joint-stock companies probably found it difficult to meet these criteria. Significantly, these listing criteria set by the CSRC were much higher than those of the main board of the HKEx. Thus, most China's enterprises under private ownership had to abandon their plans of directly listing on the main board of the HKEx as H shares.

It would appear that most regulations issued by the CSRC at this stage were mainly aimed at China's SOEs, and the CSRC did not formally specify whether private

³⁶³ People's Republic of China, *Relevant Questions Concerning Enterprises' Application for Overseas Listing Circular by China Securities Regulatory Commission* (1999 Order No.83 of China Securities Regulatory Commission of the People's Republic of China), Article 1, promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of July 14, 1999, available at: <http://www.chinalawandpractice.com/Article/1886828/Channel/9952/China-Securities-Regulatory-Commission-Relevant-Questions-Concerning-Enterprises-Application-for.html>, accessed September 18, 2012.

companies were falling within the scope of these regulations. Under the circumstances, some large Chinese private enterprises began to consider the possibilities of listing on foreign stock exchanges through an indirect route, such as back-door listing or the setting up of an offshore company as a Special Purpose Vehicle (SPV). A detailed analysis of these indirect overseas listings of Chinese companies will be provided in Section V of this chapter.

The CSRC probably soon realised that most of China's small and medium-sized enterprises could not meet the high criteria set by them within a short period of time, since the CSRC promulgated the *Examination, Approval and Supervision of Enterprises in China Applying to List on the Hong Kong Growth Enterprise Market (GEM) Guidelines* in November 1999.³⁶⁴ Unfortunately, Article 1 of this regulation stipulated that only those joint-stock companies approved by China's provincial-level governments or the State Economic and Trade Commission could file application for a listing on the Hong Kong GEM. It seems that the target for this regulation was still primarily Chinese SOEs and collectively owned enterprises.

Moreover, the Chinese government also tried to retain control of the offshore listing of Chinese companies by the simple expedient of licensing only a small proportion of PRC law firms to provide legal opinion for overseas listing. Theoretically, only

³⁶⁴ People's Republic of China, *Examination, Approval and Supervision of Enterprises in China Applying to List on the Hong Kong Growth Enterprise Market Guidelines* (1999 Order No.126 of China Securities Regulatory Commission of the People's Republic of China), promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of September 21, 1999, available at: <http://www.chinalawandpractice.com/Article/1694798/Issue/8508/Examination-Approval-and-Supervision-of-Enterprises-in-China-Applying-to-List-on-the-Hong-Kong-GEM.html>, accessed September 29, 2012.

those domestic law firms that had been accredited by the CSRC and Ministry of Justice of China could take up the legal practices relative to securities before 1998.³⁶⁵ In July 2000, the CSRC issued a notice that set out the requirements and procedures for China's law firms to perform overseas listing related legal services.³⁶⁶ In 2000, the CSRC and Ministry of Justice finally presented a circular, through which 59 select Chinese law firms were licensed to conduct business related with overseas listing.³⁶⁷ However, the government abolished these regulations in less than a year,³⁶⁸ and the CSRC published a notice towards the end of 2002 which declared that all PRC law firms could be in securities-related legal practices without restriction.³⁶⁹

³⁶⁵ People's Republic of China, *Notice about Strengthening the Administration for the Securities Legal Practices of Lawyers by China Securities Regulatory Commission* (1998 Order No.1 of China Securities Regulatory Commission of the People's Republic of China), Article 1, promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of July 3, 1998.

³⁶⁶ People's Republic of China, *Notice on Issues Concerning the Qualification Authorization of Practicing Law Offices Engaged in Securities Business for Undertaking Overseas Companies' Business Related to Domestic Rights and Interests*, Article 1, issued by China Securities Regulatory Commission of the People's Republic of China on, and effective as of July 17, 2000, available at: <http://www.lawinfochina.com/display.aspx?id=1672&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B9%FA%D6%A4%C8%AF%BC%E0%B6%BD%B9%DC%0%ED%CE%AF%D4%B1%BB%E1%B7%A8%C2%C9%B2%BF%B9%D8%D3%DA%D6%A4%C8%AF%B4%D3%D2%B5%C2%C9%CA%A6%CA%C2%CE%F1%CB%F9%B4%D3%CA%C2%C9%E6%BC%B0%BE%B3%C4%DA%C8%A8%D2%E6%B5%C4%BE%B3%CD%E2%B9%AB%CB%BE%CF%E0%B9%D8%D2%B5%CE%F1%D7%CA%B8%F1%C8%CF%BF%CF%9%D3%D0%B9%D8%CE%CA%CC%E2%B5%C4%CD%A8%B8%E6>, accessed October 2, 2012.

³⁶⁷ People's Republic of China, *Circular of China Securities Regulatory Commission and Ministry of Justice Concerning the Approval for 59 PRC Law Firms to Engage in Legal Practices for Overseas Companies that Involved Assets Located within the PRC*, jointly issued by China Securities Regulatory Commission and Ministry of Justice of the People's Republic of China on, and effective as of December 4, 2000.

³⁶⁸ People's Republic of China, *Decision of the State Council Concerning Cancelling the First Batch of Administrative Approval Items* (2002 Order No.24 of the State Council of the People's Republic of China), promulgated by the State Council of the People's Republic of China on, and effective as of November 1, 2002.

³⁶⁹ People's Republic of China, *Notice of China Securities Regulatory Commission and Ministry of Justice Concerning Abolishing the Examination and Approval Requirements for the Qualifications of Lawyers and Law Firms to Engage in Securities Legal Business* (2002 Order No.93 of China Securities Regulatory Commission of the People's Republic of China), Article 1, jointly promulgated by China Securities Regulatory Commission and Ministry of Justice of the People's Republic of China on, and effective as of December 23, 2002, available at: <http://www.chinalawandpractice.com/Article/1693337/Issue/8508/China-Securities-Regulatory-Commission-and-Ministry-of-Justice-Abolishing-the-Examination-and.html>, accessed October 2, 2012.

II. OTHER REGULATIONS OF MAINLAND CHINA RELATIVE TO OVERSEAS LISTING

Apart from these mentioned laws, several other regulations also cover the overseas listing of Chinese companies. Inevitably, Chinese companies must comply with these regulations when trying to issue shares abroad.

a) The Regulations Relative to Foreign Exchange

Foreign currency transactions were always rigorously controlled in Mainland China, and the regulator had the authority to check all foreign currency payments and related bank account information. Besides, all conversion of Renminbi (RMB) into foreign currency and foreign currency into RMB for capital account transactions, such as direct investment, portfolio investment and loans, was generally subject to the prior approval of the State Administration of Foreign Exchange (SAFE). China's government has approved some new rules in recent years to tighten foreign currency control, such as SAFE 2007 Circular 1,³⁷⁰ SAFE 2010 Circular 59³⁷¹ and SAFE 2011 Circular 11.³⁷² When overseas listing inevitably involves the usage of foreign

³⁷⁰ People's Republic of China, *Notice of the State Administration of Foreign Exchange on Issuing the Detailed Rules for the Implementation of the Measures for the Administration of Individual Foreign Exchange* (2007 Order No.1 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on January 5, 2007, and effective as of February 1, 2007, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=5762>, accessed October 5, 2012.

³⁷¹ People's Republic of China, *Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Strengthening the Administration of the Foreign Exchange Business* (2010 Order No.59 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on, and effective as of November 9, 2010, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=8327>, accessed October 6, 2012.

³⁷² People's Republic of China, *Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Further Strengthening the Administration of Foreign Exchange Business* (2011 Order No.11 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on March 18, 2011, and effective as of April 1, 2011, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=8649>, accessed October 6,

currency, these regulations relative to foreign currency must be adhered to.

b) The Regulations Relative to Foreign Exchange Spent in Certain Onshore and Offshore Transactions

In early 2005, SAFE issued two circulars to strengthen the administration of foreign exchange related with cross-border mergers and acquisitions.³⁷³ In October 2005, SAFE issued the important Circular 75 so as to replace these two circulars.³⁷⁴ The announcement of SAFE Circular 75 indicated that the Chinese government had begun to introduce some stringent new regulations on the offshore Special Purpose Vehicles (SPV) created by PRC citizens. Article 2 of SAFE Circular 75 requested PRC residents to file an application to local SAFE branches for foreign exchange registration of overseas investment before establishing offshore SPVs, especially when these SPVs were holding domestic assets. Moreover, SAFE soon issued detailed operating rules (Circular 124) for Circular 75 towards the end of 2005.³⁷⁵

2012.

³⁷³ People's Republic of China, *Notice of the State Administration of Foreign Exchange on Issues Concerning Improvement in the Administration of Foreign Exchange in Connection with Mergers and Acquisitions by Foreign Investors* (2005 Order No.11 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on, and effective as of January 24, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=6131>, accessed October 3, 2012; and People's Republic of China, *Notice of the State Administration of Foreign Exchange on Relevant Issues of Registration of Overseas Investments Contributed by Domestic Individual Residents and Foreign Exchange Registration of Merger or Acquisition with Foreign Investments* (2005 Order No.29 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on, and effective as of April 8, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4141>, accessed October 3, 2012.

³⁷⁴ People's Republic of China, *Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Foreign Exchange Administration for Domestic Residents to Engage in Financing and in Return Investment via Overseas Special Purpose Companies* (2005 Order No.75 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on October 21, 2005, and effective as of November 1, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4616>, accessed October 3, 2012.

³⁷⁵ People's Republic of China, *Notice of the State Administration of Foreign Exchange on Issuing the Operating Rules for "Notice of the State Administration of Foreign Exchange on Relevant Issues for Improving Foreign Debt*

Later, SAFE issued Circular 106 in mid-2007 to further clarify the implementation of SAFE Circular 75.³⁷⁶ According to SAFE Circular 106, the PRC subsidiaries of an offshore company covered by SAFE Circular 75 were required to coordinate and supervise the filing of SAFE registrations in a timely manner by the offshore holding company's shareholders, who were PRC residents. Besides, SAFE had also specially issued some directive procedures (Circular 77) for the foreign currency spent on capital projects in 2009.³⁷⁷ In 2011, SAFE finally promulgated the new Circular 19 on round trip investment, which could be deemed as the revision for SAFE Circular 124, Circular 106 and Circular 77.³⁷⁸

These regulations from SAFE regarding the foreign currency spent in onshore and

Administration" and "Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Foreign Exchange Administration for Domestic Residents to Engage in Financing and in Return Investment via Overseas Special Purpose Companies" (2005 Order No.124 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on, and effective as of November 24, 2005.

³⁷⁶ People's Republic of China, *Notice of the General Affairs Department of the State Administration of Foreign Exchange on Issuing the Operating Rules for the Notice of the State Administration of Foreign Exchange on the Relevant Issues about Foreign Exchange Control over the Financing and Return Investment of Domestic Residents through Overseas Special Purpose Companies* (2007 Order No.106 of General Affairs Department of the State Administration of Foreign Exchange), promulgated by State Administration of Foreign Exchange of the People's Republic of China on, and effective as of May 29, 2007, available at: <http://www.lawinfochina.com/display.aspx?id=6441&lib=law&SearchKeyword=&SearchCKeyword=%B9%D8%D3%DA%BE%B3%C4%DA%BE%D3%C3%F1%CD%A8%B9%FD%BE%B3%CD%E2%CC%D8%CA%E2%C4%BF%B5%C4%B9%AB%CB%BE%C8%DA%D7%CA%BC%B0%B7%B5%B3%CC%CD%B6%D7%CA%CD%E2%BB%E3%B9%DC%CO%ED%D3%D0%B9%D8%CE%CA%CC%E2%B5%C4%CD%A8%D6%AA>, accessed October 4, 2012.

³⁷⁷ People's Republic of China, *Directive Procedures for Foreign Currency Spent on Capital Project* (2009 Order No.77 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on, and effective as of June 9, 2009.

³⁷⁸ People's Republic of China, *Circular of the State Administration of Foreign Exchange on Printing and Distributing the Operational Rules on Foreign Exchange Administration for Financing and Return Investments by Domestic Residents through Special-Purpose Overseas Companies* (2011 Order No.19 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on May 20, 2011, effective as of July 1, 2011, available at: <http://www.lawinfochina.com/display.aspx?id=11320&lib=law&SearchKeyword=&SearchCKeyword=%BE%B3%C4%DA%BE%D3%C3%F1%CD%A8%B9%FD%BE%B3%CD%E2%CC%D8%CA%E2%C4%BF%B5%C4%B9%AB%CB%BE%C8%DA%D7%CA%BC%B0%B7%B5%B3%CC%CD%B6%D7%CA%CD%E2%BB%E3%B9%DC%CO%ED%B2%D9%D7%F7%B9%E6%B3%CC>, accessed October 4, 2012.

offshore transactions played an important role in governing the indirect overseas listing of Mainland companies, and a detailed analysis of this will be provided in a later section of this chapter.

c) The SAFE Regulations on Employee Share Options

In early 2007, SAFE issued a regulation relative to the employee shareholding plans of Chinese overseas listed companies (Share Option Rule).³⁷⁹ The purpose of the Share Option Rule was to regulate the foreign exchange administration of PRC domestic individuals who participated in the employee shareholding plans and share option plans of overseas listed companies.

According to the Share Option Rule, when a PRC domestic individual participated in any employee shareholding plan, or share option plan of an overseas listed company, a PRC domestic agent or the PRC subsidiary of such overseas listed company should file an application with SAFE on behalf of such individual to obtain approval for an annual quota with respect to the purchase of foreign exchange in connection with the shareholding or share option exercises, since PRC domestic individuals might not directly use overseas funds to purchase shares or exercise share options.

³⁷⁹ People's Republic of China, *Operating Rules on the Foreign Exchange Administration of the Participation of Domestic Individuals in the Employee Stock Ownership Plans, Share Option Plans, Etc. of Overseas Listed Companies* (2007 Order No.78 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on, and effective as of March 28, 2007, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=7113>, accessed October 4, 2012.

d) China's Other Regulations Related to Overseas Listing

Apart from these mentioned regulations, some other Chinese regulatory bodies, such as the Ministry of Information Industry³⁸⁰ and Ministry of Commerce had also issued laws and regulations that covered overseas listing.

For instance, a circular promulgated by the Ministry of Information Industry in 2006 specified that the overseas listing of domestic telecommunications enterprises were subject to the approval of the concerned departments of the State Council.³⁸¹ Furthermore, another circular regarding Internet audio and visual programs³⁸² requested that these companies providing such programs should submit a proposal to the authorities for examination if they were planning to float on foreign stock markets.

Significantly, the Ministry of Commerce issued several catalogues for guiding foreign investment,³⁸³ and the State Council also offered its opinions about foreign

³⁸⁰ This ministry was superseded by the Ministry of Industry and Information Technology in 2008.

³⁸¹ People's Republic of China, *Circular of the Ministry of Information Industry on Intensifying the Administration of Foreign Investment in Value-added Telecommunications Services*, Article 1, promulgated by the Ministry of Information Industry of the People's Republic of China on, and effective as of July 13, 2006, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=5465>, accessed October 4, 2012.

³⁸² People's Republic of China, *Administrative Provisions on Internet Audio-Visual Program Service* (2007 Order No.56 of the Ministry of Information Industry and State Broadcasting, Film and TV Administration), Article 12 and Article 23, jointly promulgated by the Ministry of Information Industry and State Broadcasting, Film and TV Administration of the People's Republic of China on December 20, 2007, and effective as of January 31, 2008, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=6582>, accessed October 5, 2012.

³⁸³ China's government tried to regularly update these catalogues; see People's Republic of China, *Catalogue of Industries for Guiding Foreign Investment* (2011 Order No.12 of Ministry of Commerce and National Development and Reform Commission), jointly promulgated by Ministry of Commerce and National Development and Reform Commission of the People's Republic of China on December 24, 2011, and effective as of January 30, 2012, available at: <http://www.lawinfochina.com/display.aspx?id=9125&lib=law>, accessed October 5, 2012; also People's Republic of China, *Notice of the Foreign Investment Administration of the Ministry of Commerce on Distributing the Manual of Guidance on Administration for Foreign Investment Access* (2008 Order No.530 of Foreign Investment Administration of the Ministry of Commerce), promulgated by

investment control.³⁸⁴ As several Chinese companies have begun to consider the possibility of indirectly listing on foreign stock markets by Variable Interest Entity (VIE) in recent years, one catalogue has become increasingly important. The key role played by the Catalogue of Industries for Guiding Foreign Investment in regulating the overseas listing of Chinese companies will be analysed in a later section of this chapter.

It should be noted that China's industries were classified into four categories for foreign investment in the 2011 Catalogue of Industries for Guiding Foreign Investment: "encouraged", "permitted", "restricted", and "prohibited". The offshore listing applications of these companies that fell under the sector of "encouraged" and "permitted" would be treated sympathetically by the CSRC in the vast majority of cases. By contrast, the CSRC explicitly prohibited those companies belonging to the "prohibited" sector from listing on foreign stock exchanges. Furthermore, Chinese companies that fell under the scope of "restricted" category were subject to a much higher level of CSRC's scrutiny. Technically, the CSRC would not sanction the overseas listing applications filed by these companies from a "restricted" sector, if such companies were to fall under the *de facto* control of foreigners.

Arguably, these mentioned circulars and notices issued by various departments of

Ministry of Commerce of the People's Republic of China on, and effective as of December 18, 2008, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=9587>, accessed October 5, 2012.

³⁸⁴ People's Republic of China, *Several Opinions of the State Council on Further Doing a Good Job in the Utilization of Foreign Investment* (2010 Order No.9 of the State Council of the People's Republic of China), promulgated by the State Council of the People's Republic of China on, and effective as of April 6, 2010, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=8014>, accessed October 5, 2012.

China's government had no direct relevance to the overseas listing of Chinese companies. However, such subsidiary regulations actually made it possible for the Chinese government to retain control of those companies that belonged to strategically important sectors.

III. THE CHINA SECURITIES REGULATORY COMMISSION (CSRC) AND STATE-OWNED ASSETS SUPERVISION AND ADMINISTRATION COMMISSION (SASAC)

As mentioned earlier, the China Securities Regulatory Commission (CSRC) is a ministry-level ranked institution directed by the State Council of China. The CSRC has been empowered to supervise Mainland China's nationwide securities and futures markets in order to maintain their competitiveness, orderliness and transparency.³⁸⁵ The Commission has the power to supervise securities issuers, as well as to investigate and impose penalties for illegal activities related to securities and futures.³⁸⁶ The Commission is also granted authority to formulate policies and regulations for capital markets, and issue non-legally binding guidance for publicly listed companies. The CSRC is comprised of 18 departments, an enforcement bureau and a public offering review committee consisting of professionals and experts. Moreover, 36 regional branches of the CSRC have been set up in provinces, autonomous regions and municipalities throughout Mainland China. Especially, two

³⁸⁵ Huang, Chi-Wei, "Worldwide Corporate Convergence within A Pluralistic Business Legal Order: Company Law and the Independent Director System in Contemporary China", *Hastings International and Comparative Law Review*, Vol. 31, No. 1, 2008, p. 411.

³⁸⁶ Friedman, William I., "One Country, Two Systems: The Inherent Conflict Between China's Communist Politics and Capitalist Securities Market", *Brooklyn Journal of International Law*, Vol. 27, Issue 2, 2002, p. 484.

special supervision bodies have been established in Shanghai and Shenzhen, where two of the Mainland's stock exchanges are situated. In summary, the CSRC's role is quite similar to that of the Securities and Exchange Commission (SEC) in the U.S., or the Financial Services Authority (FSA) in the U.K.

The special dominant role played by China's government in the national economy has been reviewed by several scholars,³⁸⁷ and the CSRC actually acted as the voice of the Chinese government in the regulatory environment for overseas listed companies in China. Indisputably, overseas listed Chinese companies were still subject to the rules and regulations, such as company law and securities law, issued by the Chinese government, since their primary operations were located in Mainland China. Moreover, the CSRC also encouraged overseas listed companies to adopt the corporate governance code it had issued,³⁸⁸ although this code was theoretically applicable to companies publicly listed on the Mainland's stock exchanges only.

As analysed in the last section of this chapter, the State Council of China is the top regulatory body responsible for overseas listed Chinese companies, and the CSRC can be deemed as an executive body for the State Council on the regulation of offshore listed Chinese companies. It has been argued by some commentators that

³⁸⁷ Brahm, Lawrence, "Zhu Rongji's 'Managed Marketization' of the Chinese Economy", in *China: Enabling A New Era of Changes*, Mar, Pamela C. and Richter, Frank-Jurgen (edited), John Wiley & Sons, Singapore, p. 71.

³⁸⁸ People's Republic of China, *Code of Corporate Governance for Listed Companies in China* (2002 Order No.1 of China Securities Regulatory Commission of the People's Republic of China), issued by China Securities Regulatory Commission of the People's Republic of China on, and effective as of January 7, 2002, available at: <http://legaltranz.wordpress.com/2006/03/06/%E4%B8%8A%E5%B8%82%E5%85%AC%E5%8F%B8%E6%B2%BB%E7%90%86%E5%87%86%E5%88%99-code-of-corporate-governance-for-listed-companies-in-china/>, accessed October 12, 2012.

the power of the CSRC is absolute when compared with its foreign counterparts, such as the SEC or FSA.³⁸⁹ To some extent, these commentators' arguments are accurate. In terms of the overseas listing of Mainland companies, the State Council and CSRC can directly authorise or reject the overseas listing applications filed by Chinese companies without explaining their decision to the applicants. Besides, the CSRC has the *de facto* right to discipline almost all overseas listed Mainland companies, particularly those major offshore listed companies with Chinese SOEs and collectively owned enterprises as dominant shareholders.

As witnessed by the promulgation of these laws and regulations governing the overseas listing of Chinese companies, which have been reviewed in the last two sections of this chapter, the CSRC held the *de jure* and *de facto* power to formulate regulations and policies on the offshore listing of Mainland companies. Surely the CSRC would not make such policies in a vacuum in the vast majority of cases. Without doubt, the CSRC's operation was still under the leadership of the powerful State Council, as administrative powers and measures were always the most important approach for China's government to regulate overseas listed Mainland companies.

Although China's government alleged that most overseas listed Mainland companies that had been transformed from former Chinese SOEs had established modern

³⁸⁹ Jia, Xinting and Tomasic, Roman, *Corporate Governance and Resource Security in China: The Transformation of China's Global Resources Companies*, Routledge, New York, 2010, p. 15.

corporate governance systems, these companies were actually still under the tight control of the Communist Party, and Mr K (Interviewee No.11) provided further facts surrounding this. By the account of Mr K, these Mainland companies with China's SOEs or collectively owned enterprises as dominant shareholders have continued to occupy a prominent position among all overseas listed Chinese companies in recent years. Moreover, most senior executives of such overseas listed Mainland companies, including the chairman and chief executive officer (CEO) were Communist Party members. China's government generally established control over these overseas listed Chinese companies by administrative measures, since most senior executives of these companies were politically appointed rather than democratically elected.

Take the centrally owned enterprises of China, for instance. As explained previously, China's centrally owned enterprises had been classified into three categories according to their importance by China's government, which were "strategically important enterprises", "basic industries enterprises" and "other industries enterprises". As far as Mr K was aware, the Organization Department of the Communist Party of China Central Committee politically appointed the chairman and CEO for more than a third of China's centrally owned enterprises, since these enterprises had been defined as "strategically important" by China's government. Where the "basic industries enterprises" accounted for around one third of all Chinese centrally owned enterprises, the SASAC had the right to appoint the

chairman and CEO for these enterprises. With regard to the “other industries enterprises”, the CSRC maintained strong influence over the appointment of certain senior executives of these enterprises, although the Chinese government had reduced state ownership shares in such enterprises in recent years.

Apart from centrally owned enterprises, several other enterprises in certain key industries had also been formed from substantial Chinese SOEs, and some of these enterprises might have been recognised as vitally important contributors to the economy by the Chinese government. With almost all centrally owned enterprises and the said vitally important enterprises deemed as the engine of the Mainland’s national economy, there is very little likelihood that the Chinese government will loosen its hold on these enterprises in the foreseeable future, regardless of whether such enterprises have been listed on foreign stock exchanges or not.

It should be noted that most overseas listed Chinese companies that transformed from former SOEs bear strong resemblance in their ownership structures, as they all have a dominant shareholder which is a Chinese state-owned parent company in most instances. The state-owned parent companies generally own more than 50 per cent of the overseas listed company’s outstanding shares, and this allows the parent companies outright control of the overseas listed company’s operations, especially the election of its board of directors and other senior executives. Some scholars argued that this state dominance model seen in China’s SOEs ownership structure

would not be easily displaced by a different model, and that the history of the Chinese SOEs' reform substantiated that the path-dependence theory proposed by Bebchuk and Roe could be applied to China's SOEs.³⁹⁰

Mr K reported that the state-owned parent companies of these offshore listed Chinese companies are still largely seen as traditional SOEs by China's government and these parent companies are generally regulated by the SASAC and CSRC, who serve as the voice of China's government. Besides, these said state-owned parent companies were also under the supervision of various corresponding ministries, exemplified by the Ministry of Industry and Information Technology and the Ministry of Transport.

The State-owned Assets Supervision and Administration Commission of the State Council (SASAC) is a special institution directly affiliated with the State Council. The SASAC shoulders the responsibility for managing China's state-owned enterprises, including appointing top executives and approving any acquisitions or mergers. The SASAC also supervises the sales of state-owned shares or assets, as well as formulating regulations related to state-owned enterprises. Significantly, the SASAC has been authorised to dispatch supervisory panels to SOEs on behalf of the state council so as to oversee the management of the SOEs.³⁹¹

³⁹⁰ Tang, Junhua and Linowski, Dirk, "Corporate Governance at the Chinese Stock Market: How it Evolved", in *Corporate Governance and Business Ethics*, Brink, Alexander (edited), Springer, London, 2011, p. 140; also Bebchuk, Lucian A. & Roe, Mark J., "A Theory of Path Dependence in Corporate Ownership and Governance", *Stanford Law Review*, Vol. 52, No. 1, 1999, p. 127.

³⁹¹ Jiang, Lan, "Development of Corporate Social Responsibility in China: Measures, Development, 205

Mr K said that a kind of special regulatory privilege enjoyed by the SASAC is to evaluate the performances of almost all the top executives of China's centrally owned enterprises and SOEs. As mentioned previously, centrally owned enterprises and some other large SOEs are the parent companies or dominant shareholders of a large number of overseas listed Chinese companies. Thus, the said overseas listed Chinese companies are subject to the *de facto* control of the SASAC in this special regulatory environment. Besides, it must be mentioned that the SASAC is directly under the control and supervision of the State Council of China, though the State Council has given the SASAC greater autonomy over the regulation of China's overseas listed companies in recent years.

Mr K also advised that the SASAC has never disclosed which kind of norms had been adopted for evaluating the performances of SOEs' executives, but that the SASAC holds absolute discretion to decide whether or not to remove the president, CEO and other top executives of almost all of China's SOEs. Besides, the SASAC could also take disciplinary actions against the senior executives of China's SOEs, provided that those executives had been involved in some form of misconduct, and such misconduct was not sufficiently serious that it undermined the trust that the SASAC had in these executives. Mr K gave the example of XIONG Weiping, who was the president of the Aluminium Corporation of China Limited (CHALCO) as a

Implementation, Reality and Problems", in *Governance in the Business Environment (Developments in Corporate Governance and Responsibility Volume 2)*, Aras, Guler and Crowther, David (edited), Emerald Group Publishing Limited, Bingley, 2011, p. 141.

top executive and viewed favourably by the SASAC. As the performance and talents of XIONG had been fully appreciated by some elevated officials of SASAC, the commission was even considering whether there was any possibility to appoint XIONG as the presidents for two centrally owned enterprises simultaneously.

Generally, the CSRC and SASAC are the main regulatory bodies in China's current regulatory framework for overseas listed Mainland companies. Technically, the administrative measures taken by China's government and the power of the major SOEs' top executives' appointment or removal by the CSRC and SASAC are vital elements in this regulatory environment. Apart from China's laws and regulations, overseas listed Chinese companies are also subject to the listing rules of the foreign stock exchanges that they are listed on. These listing rules of foreign stock exchanges will be reviewed in next section.

IV. THE LISTING RULES OF OVERSEAS STOCK EXCHANGES

Hundreds of large and medium-sized Chinese SOEs and collectively owned enterprises have been listed on the Hong Kong, London, New York and other foreign stock exchanges. Furthermore, almost all of China's companies have tended to consider a well-regarded market as the listing venue, since prominent stock markets can provide better trading infrastructure and sounder regulatory frameworks.

All major foreign stock exchanges have issued detailed listing rules, which generally contain listing standards for domestic and foreign companies, listing fees and continued listing standards. Therefore, every prospective Chinese company must satisfy the minimum listing requirements of the foreign stock exchanges before they are qualified for listing. Besides, Chinese companies that have been listed on overseas stock exchanges have had to meet the continued listing criteria of these stock exchanges, otherwise the appropriateness of their continued listing would be scrutinised by the stock exchanges.

With the latter case study chapters of this research analysing six Chinese companies listed on the New York Stock Exchange (NYSE) and Hong Kong Stock Exchange (HKEx), we will try to briefly examine the listing rules of the NYSE and HKEx in this section.

The NYSE provides two sets of listing standards, which are the U.S. standards and Non-U.S. standards. A prospective Chinese company would generally have to fulfil the distribution and financial criteria of the Non-U.S. listing standards that were applicable to them.³⁹² There is no doubt that China's companies also have to sign the Listed Securities Fee Agreement with the NYSE, by which Chinese companies are requested to pay the listing fees and annual fees.³⁹³ Furthermore, Chinese

³⁹² See New York Stock Exchange, *NYSE Listed Company Manual - Section 103.01 Minimum Numerical Standards Non-U.S. Companies Equity Listings: 103.01A and 103.01B*, available at: http://nysemanual.nyse.com/LCMTools/PlatformViewer.asp?searched=1&selectednode=chp_1_2_3_2&CiRestriction=103.01&manual=%2Ffcm%2Fsections%2Ffcm-sections%2F, accessed October 8, 2012.

³⁹³ See New York Stock Exchange, *NYSE Listed Company Manual - Section 902.00 Fees for Listed Securities*, 208

companies must ensure that they will not fall below any of the quantitative and qualitative continued listing criteria adopted by the NYSE,³⁹⁴ or they risk being suspended or even delisted by the exchange.

An increasing number of disputes have broken out between international auditors and Chinese companies listed on the NYSE and HKEx,³⁹⁵ and the accuracy of financial reporting presented by Chinese companies has been challenged by some foreign investors. Technically, the NYSE has implemented stringent Listed Company Compliance for listed companies, which consists of Financial Compliance and Corporate Compliance. Financial Compliance generally reviews the health of the Chinese companies' finances, which might be based on certain kinds of criteria including earnings, cash flow, trading volume, market value and share price, etc. Moreover, the NYSE requires listed Chinese companies to fully comply with the International Financial Reporting Standards (IFRS). Where Chinese listed companies are unable to meet any of these requirements, suspension or delisting from the NYSE is a possible result. In some cases, the NYSE might agree to give non-compliant Chinese companies a temporary respite, which would enable non-compliant companies to take remedial action so as to return to compliance. However, the remedial plans proposed by the non-compliant companies must come to fulfilment

available at: http://nysemanual.nyse.com/LCMTools/PlatformViewer.asp?searched=1&selectednode=chp_1_10_2_1&CiRestriction=902.01&manual=%2Ffcm%2Fsections%2Ffcm-sections%2F, accessed October 9, 2012.

³⁹⁴ See New York Stock Exchange, *NYSE Listed Company Manual- Section 802.00 Continued Listing*, available at: http://nysemanual.nyse.com/LCMTools/PlatformViewer.asp?searched=1&selectednode=chp_1_9_2&CiRestriction=802.00&manual=%2Ffcm%2Fsections%2Ffcm-sections%2F, accessed October 8, 2012.

³⁹⁵ See Hu, Fox, "Trouble for China's Foreign IPOs", *Bloomberg Businessweek*, May 3, 2012, available at: <http://www.businessweek.com/articles/2012-05-03/trouble-for-chinas-foreign-ipos>, accessed October 9, 2012.

within the time allotted.

By contrast, Corporate Compliance of the NYSE sets out very high standards of corporate governance practices for Chinese listed companies, which generally examine the accountability and transparency of these companies. With the corporate governance listing standards of the NYSE having been amended on several occasions in recent years, the issues of composition of corporate board, configuration of audit committee, director independence, the accuracy and balance of disclosure and the protection of minority shareholders have been the main focus of attention. In addition, a number of new rules were enacted by the SEC following the announcement of the Sarbanes-Oxley Act of 2002,³⁹⁶ the main aim of which was to direct the American securities exchanges to ensure that all issuers were in compliance with the requirements relating to the disclosure and independence of the audit committee mandated by the Sarbanes-Oxley Act of 2002.³⁹⁷ In fact, such ground rules for audit committees had already been laid down by the Securities Exchange Act of 1934,³⁹⁸ and therefore the new rules proposed by the SEC could be deemed as the detailed implementation of the Securities Exchange Act of 1934 and

³⁹⁶ United States of America, *The Sarbanes-Oxley Act of 2002*, Section 301, Public Law No. 107-204, 116 Stat. 745, enacted as of July 30, 2002, Section 404, available at: <http://www.gpo.gov/fdsys/pkg/PLAW-107publ204/content-detail.html>, accessed October 10, 2012; this is a United States federal law also known as the *Public Company Accounting Reform and Investor Protection Act of 2002*.

³⁹⁷ See New York Stock Exchange, *NYSE Listed Company Manual - Section 303A.00 Corporate Governance Standards*, available at: http://nysemanual.nyse.com/LCMTools/PlatformViewer.asp?searched=1&selectednode=chp_1_4_3_1&CiRestriction=303A&manual=%2Fflcm%2Fsections%2Fflcm-sections%2F, accessed October 9, 2012; also United States Securities and Exchange Commission, *Standards Relating to Listed Company Audit Committees*, available at: <http://www.sec.gov/rules/final/33-8220.htm>, accessed October 9, 2012.

³⁹⁸ United States of America, *The Securities Exchange Act of 1934*, 48 Stat. 881, enacted as of June 6, 1934, codified at 15 United States Code § 78a et seq., Section 10A (m) (1), available at: www.sec.gov/about/laws/sea34.pdf, accessed October 10, 2012.

the Sarbanes-Oxley Act of 2002. While all listed issuers were requested to meet the new exacting standards regarding audit committees by 2004, China's private issuers were given additional time to comply.

With regard to the HKEx, which was also one of the preferred listing venues for most Mainland companies, this exchange had also issued strict pre and post-listing requirements. As the HKEx's main board listing rules were applicable to these large Chinese companies, the listing requirements of the HKEx's Growth Enterprise Market (GEM) were moderated for small and medium-sized enterprises. The basic listing requirements for equities of the HKEx's main board had some chief considerations, which generally included the financial circumstances and operating history and management of the new applicant, the minimum market capitalisation and the offering mechanism.³⁹⁹ Furthermore, the HKEx has also set out additional modifications and exceptions to the basic listing requirements of the main board for some special companies and industries, such as spin-off listing and secondary listing. From mid-2008, Chinese companies could also apply to list on the HKEx in depositary receipt (HDR) form if they could fulfil the requirements of the HKEx's listing rules, but these companies must also be in compliance with China's regulatory regime.⁴⁰⁰

³⁹⁹ Hong Kong Stock Exchange, Listing Matters, Listing Requirements and Procedures: Listing Requirements, available at: http://www.hkex.com.hk/eng/listing/listreq_pro/listreq/equities.htm, accessed October 10, 2012.

⁴⁰⁰ Hong Kong Stock Exchange, Rules & Regulations, Rules and Guidance on Listing Matters: Depositary Receipt Framework (HDR), available at: <http://www.hkex.com.hk/eng/rulesreg/listrules/rulesandguidelines.htm>, accessed October 10, 2012.

As is often the case with other foreign stock exchanges, the HKEx requested the new Mainland applicants to pay an initial listing fee for their issue of equity securities, and this initial listing fee was proportional to the value of the equity securities to be listed. Technically, new Mainland applicants needed a suitable sponsor for their listing proposal, specifically a company or financial institution accredited by the Hong Kong Securities and Futures Commission.⁴⁰¹ The sponsor would be in complete charge of all matters relating to the listing application. It seems that the HKEx and the Securities and Futures Commission (SFC) attached great importance to the role played by the sponsors in the listing application, and this was largely due to the fact that substantial numbers of companies listed on the HKEx had their primary operations outside the jurisdiction of Hong Kong.⁴⁰²

After the Mainland companies were listed on the HKEx, they still had to meet the post-listing requirements issued by the HKEx. The continuing obligations of issuers generally covered the following areas: disclosure of price-sensitive and financial information, trading and settlement arrangements and relevant information regarding the senior management and directors.⁴⁰³ Significantly, the HKEx prescribed that issuers should appoint an independent post-listing adviser, which was also known as a compliance adviser. Further, the HKEx had compelled listed Mainland companies

⁴⁰¹ See *Consultation Conclusions Report: The Regulation of Sponsors and Independent Financial Advisers (IFAs)*, jointly published by the Stock Exchange of Hong Kong Limited (SEHK) and the Securities and Futures Commission (SFC) on October 19, 2004, available at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/cpbefore2005.htm>, accessed October 11, 2012.

⁴⁰² These kinds of companies have also been termed as “non-resident companies” by some commentators.

⁴⁰³ See Hong Kong Stock Exchange, *Main Board Listing Rules*, Chapter 13: Continuing Obligations, available at: www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_13.pdf, accessed October 11, 2012.

to adopt high corporate governance standards, as well as establish an effective system for internal control. The HKEx emphasised the importance of appointing certain independent non-executive directors by the issuers, and the Mainland companies were also requested to establish an audit committee, the majority of whose members should be independent non-executive directors.⁴⁰⁴ As some issues might not have been defined clearly in the listing rules, HKEx also published frequently asked questions (FAQs) to help issuers understand the Listing Rules. These FAQs encompassed important amendments relating to corporate governance and listing criteria, as well as the model code for the directors of listed companies.⁴⁰⁵

Seemingly, both the NYSE and HKEx had established sound regulatory frameworks for issuers, and all the Chinese companies that had been listed on these two stock exchanges would operate under such disciplined regulatory frameworks. Further, offshore listed Chinese companies were also subject to the supervision of the overseas securities regulators of whose jurisdiction they were under, in addition to the requirements imposed by the Chinese government. With overseas listed Chinese companies under such more stringent regulations in comparison with domestic companies, their corporate governance would arguably have been improved to a certain degree.

⁴⁰⁴ See Hong Kong Stock Exchange, *Main Board Listing Rules*, Chapter 3: Authorized Representative and Directors, available at: www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_3.pdf, accessed October 11, 2012.

⁴⁰⁵ Hong Kong Stock Exchange, Rules & Regulations, Rules and Guidance on Listing Matters: Frequently Asked Questions, available at: <http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/faq.htm>, accessed October 12, 2012.

It is important to highlight that foreign listing could take several different forms, while some types of foreign listing such as issuing depositary receipts on foreign stock exchanges might be a simpler proposition in comparison with other types. Depositary receipts generally refer to a negotiable certificate that represents the outstanding shares of a foreign company; however, they are traded on local stock exchanges.⁴⁰⁶ When foreign custodial banks and local depositary banks act as intermediaries between the listed company and depositary receipt holders, the dividends will be paid to investors in their local currency.

Those depositary receipts traded on the U.S. financial markets have been referred to as American Depositary Receipts (ADRs), with these ADRs actually representing the underlying securities of foreign companies, which are American Depositary Shares (ADSs). Technically, the ADR structure encompasses different classes of ADR programmes, which contain Level 1 unlisted (Over-the-Counter) ADRs, Level 2 listed ADRs, Level 3 public offering ADRs, privately placed ADRs and offshore ADRs.⁴⁰⁷ The creation of ADRs made it possible for foreign companies to have their equities traded on large U.S. capital markets, such as the NYSE, by a less onerous listing regime than full listing, as various depositary receipt programmes offer a far greater degree of flexibility echoing the way that the regulatory reporting

⁴⁰⁶ Chong, Alberto and López-de-Silanes, Florencio, "Corporate Governance in Latin America", in *Investor Protection and Corporate Governance: Firm-level Evidence Across Latin America*, Chong, Alberto and López-de-Silanes, Florencio (edited), The World Bank Publications, Washington DC, 2007, p. 52.

⁴⁰⁷ J. P. Morgan, *Depositary Receipts Reference Guide*, available at: https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCwQFjAA&url=https%3A%2F%2Fwww.adr.com%2FHome%2FLoadPDF%3FCMSID%3D88b09551120043cfce03554006845cb&ei=caRhUrGMIYqV0QXh0YDwDg&usg=AFQjCNHjP_S4_GQyDwAxQHBT9fOXTwhZKQ&sig2=-RgKWTKrNI0m67mP6TeHeg&bvm=bv.54176721,d.d2k, accessed October 18, 2013, p. 9.

and accounting requirements of different ADR programmes vary enormously.⁴⁰⁸

The prevailing view seems to be that the owners of ADRs have to bear increased risk in contrast with normal shareholders that hold stock directly, since ADRs actually contain certain distinct risks such as currency risk, political risk and inflationary risk.⁴⁰⁹ Nevertheless, the issuing company of Level II ADRs and Level III ADRs still has to abide by the listing rules of the prospective stock exchange, together with the continued reporting requirements as defined by the SEC. Significantly, the Level III ADRs involve U.S. public offering, and thus must strictly adhere to both the SEC's registration and disclosure requirements as well as the U.S.'s GAAP.⁴¹⁰

V. BACK-DOOR LISTING, SPECIAL PURPOSE VEHICLE (SPV) AND VARIABLE INTEREST ENTITY (VIE)

Most of China's major SOEs and large private enterprises probably prefer to list their shares overseas by a normal and direct manner, but the direct overseas listing is very costly, since it involves many legal and accounting issues.⁴¹¹ Hence, some Chinese companies began to consider whether there was any more convenient indirect route to list on foreign stock markets, such as back-door listing or by setting up a Special

⁴⁰⁸ For the differences between various ADR programmes, see Boubakri, Narjess; Cosset, Jean-Claude and Samet, Anis, "The Choice of ADRs", *Journal of Banking & Finance*, Vol. 34, Issue 9, 2010, p. 2080.

⁴⁰⁹ Gurusamy, S., *Merchant Banking and Financial Services*, Tata McGraw-Hill, New Delhi, 2009, p. 119.

⁴¹⁰ Kambhato, Phumchai, "American Depositary Receipts, Global Depositary Receipts and Other New Financing Instruments", in *Privatization and Emerging Equity Markets*, Lieberman, Ira W. and Kirkness, Christopher D. (edited), World Bank Publications, Washington D.C., 1998, p. 119.

⁴¹¹ Karolyi, G. Andrew, "Why Do Companies List Shares Abroad?: A Survey of the Evidence and Its Managerial Implications", *Financial Markets, Institutions & Instruments*, Vol. 7, Issue 1, 1998, p. 1.

Purpose Vehicle (SPV).

The back-door overseas listing history of Chinese companies can be traced back to 1984, when the Bank of China Limited and China Resources (Holdings) Company Limited jointly invested HK\$ 180,000,000 to acquire an approximate 35 per cent shareholding of the Conic Investment Company, which was a company on the Hong Kong Stock Exchange (HKEx). Latterly, an increasing number of China's big SOEs, such as Capital Steel Group, China Aerospace Science and Technology Corporation, and China National Cereals, Oils and Foodstuffs Corporation, tried to indirectly list on the HKEx through reverse mergers. In fact, the overseas operations of Chinese enterprises were more foreign direct investment than back-door listing in this period, and these overseas operations were largely motivated by the political interests of the Chinese government.⁴¹² Essentially, overseas listing had not become a real trend among China's SOEs throughout the 1980s.

From 1992, China's enterprises began to list on American stock markets by back-door listing, and the Brilliance Auto Group⁴¹³ was the first in China to list on the New York Stock Exchange (NYSE) via an offshore Special Purpose Vehicle established in a tax heaven,⁴¹⁴ where this SPV held Brilliance Auto Group's assets in

⁴¹² Zhang, Hai-Yan and Bulcke, Danny Van Den, "China: Rapid Changes in the Investment Development Path", in *Foreign Direct Investment and Governments: Catalysts for Economic Restructuring*, Dunning, John H. and Narula, Rajneesh (edited), Routledge, London, 1996, p. 398.

⁴¹³ The company's full name is Brilliance China Automotive Holdings Limited, and it is one of China's first SOEs to be restructured into a share-owned company; Brilliance Auto was delisted from NYSE in 2007.

⁴¹⁴ The term "tax heaven" generally refers to a country or a district that offers near zero rates of taxation to non-resident companies; see Palan, Ronen; Murphy, Richard and Chavagneux, Christian, *Tax Havens: How Globalization Really Works*, Cornell University Press, New York, p. 30.

China.⁴¹⁵ It seems that transferring the ownership of the domestic company to the offshore SPV is the key factor in the SPV listing of Chinese companies, and this kind of SPV is established by the founders of the domestic company in most cases. At this point, foreign Venture Capital (VC) is ready to invest in the offshore SPV to increase the SPV's capital, which will finally enable the SPV to list on foreign stock markets.⁴¹⁶ SPV overseas listing soon aroused the attention of the CSRC, which issued a circular on February 4, 1994 stipulating that all Chinese enterprises should apply for approval from the CSRC before their SPV listing.⁴¹⁷

In fact, China's authority had overlooked SPV listing for some time, since this method of overseas listing had been adopted by only a few private companies during the 1990s. However, the listing of the Beijing Yuxing Group on the Growth Enterprise Market (GEM) of the HKEx finally fell under the CSRC's notice in 1999. Although the CSRC eventually approved the overseas listing of Yuxing under the authority of the State Council, the Chinese government decided to take steps to scrutinise in greater detail the administration of SPV listing.

In mid-2000, the CSRC issued the important Circular 72, through which the CSRC requested that any companies that intended to issue shares or list on foreign stock exchanges should submit prior draft legal opinion to the CSRC for review. If the

⁴¹⁵ This method for listing on foreign stock exchange will be referred to as "SPV listing" hereinafter.

⁴¹⁶ Jingu, Takeshi, "Private Equity in China", in *The Oxford Handbook of Private Equity*, Cumming, Douglas (edited), Oxford University Press, New York, 2012, Chapter 25.

⁴¹⁷ People's Republic of China, *Circular Concerning the Approval Procedure of the Issue and Listing of Shares Outside China for China's Domestic Companies*, issued by China Securities Regulatory Commission of the People's Republic of China on, and effective as of February 4, 1994.

draft legal opinion was satisfactory, the CSRC would issue a “No-comment Letter” for the company.⁴¹⁸ Circular 72 clearly illustrated that this Circular was mainly aimed at those private companies that attempted to list on foreign stock markets through an SPV structure, while SPV listings involving state-owned assets were also subject to Circular 72. Additionally, Article 1 of Circular 72 also prescribed that the overseas listing matters of China’s companies should still be dealt with in accordance with the 1997 Red-chip Guidelines, if these matters fell within the scope of the Guidelines. Unfortunately, the Chinese government soon found that the CSRC appeared to be a most unlikely candidate for scrutinising all the Chinese companies that were attempting to list abroad, since this gatekeeper role should be jointly conducted by intermediaries, sponsors and underwriters. Thus, the State Council nullified Circular 72 only three years later,⁴¹⁹ and the CSRC also officially announced that the “No-comment Letter” no longer existed.⁴²⁰

The abolition of the “No-comment Letter” meant the overseas listing of an offshore SPV that held assets in China was not subject to the CSRC’s approval, provided such

⁴¹⁸ People’s Republic of China, *Circular of China Securities Regulatory Commission on Issues Concerning Stock Issuance and Public Offering Abroad of Overseas Corporations which Involve Domestic Equity* (2000 Order No.72 of China Securities Regulatory Commission of the People’s Republic of China), promulgated by China Securities Regulatory Commission of the People’s Republic of China on, and effective as of June 9, 2000, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=10279>, accessed September 19, 2012; also Xiao, Wei, “Legal Services in the Field of Banking and Finance”, in *China’s Emerging Financial Markets: Challenges and Global Impact*, Zhu, Min; Cai, Jinqing and Avery, Martha (edited), John Wiley & Sons, Singapore, 2009, p. 533.

⁴¹⁹ People’s Republic of China, *Decision of the State Council Concerning Cancelling the Second Batch of Administrative Approval Items and Changing the Administrative Methods of Some Administrative Approval Items* (2003 Order No.5 of the State Council of the People’s Republic of China), promulgated by the State Council of the People’s Republic of China on, and effective as of February 27, 2003.

⁴²⁰ People’s Republic of China, *Announcement of China Securities Regulatory Commission on Canceling the Second Group of Administrative Approval Items and on Changing the Management Methods of Some Administrative Approval Items* (2003 Order No.17 of China Securities Regulatory Commission of the People’s Republic of China), promulgated by China Securities Regulatory Commission of the People’s Republic of China on, and effective as of April 1, 2003, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=2676>, accessed October 2, 2012.

assets were not state-owned assets. Meanwhile, China's authority introduced another new measure to control SPV listings. In late 2003, the Chinese government issued the *Interim Provisions for Foreign Investors to Merge Domestic Enterprises*, by which China's authorities requested that the value of the acquired Chinese companies involved in a cross-border merger should be determined by an independent valuator.⁴²¹ Furthermore, the State Administration of Foreign Exchange (SAFE) issued Circular 11 in 2005, which stipulated that PRC citizens should file applications for foreign exchange registration with their local SAFE before directly or indirectly establishing, or gaining control of, an offshore SPV.⁴²² As the 2005 SAFE Circular 11 was not entirely satisfactory, it was soon replaced by the 2005 SAFE Circular 29, by which SAFE forwarded stricter requirements regarding foreign exchange registration and relevant information disclosure in connection with the offshore investment.⁴²³ In late 2005, the Chinese government finally promulgated the long awaited SAFE Circular 75, which officially stipulated the ground rules for the use of offshore SPVs in relation to the overseas listing and

⁴²¹ People's Republic of China, *Interim Provisions for Foreign Investors to Merge Domestic Enterprises* (2003 Order No.3 of the Ministry of Foreign Trade and Economic Cooperation, the State Administration of Taxation, the State Administration for Industry and Commerce, and the State Administration of Foreign Exchange of the People's Republic of China), promulgated on March 7, 2003, and effective as of April 12, 2003, available at: <http://www.lawinfochina.com/display.aspx?id=2630&lib=law&SearchKeyword=&SearchCKeyword=%CD%E2%B9%FA%CD%B6%D7%CA%D5%DF%B2%A2%B9%BA%BE%B3%C4%DA%C6%F3%D2%B5%D4%DD%D0%D0%B9%E6%B6%A8>, accessed October 20, 2012.

⁴²² People's Republic of China, *Notice of the State Administration of Foreign Exchange on Issues Concerning Improvement in the Administration of Foreign Exchange in Connection with Mergers and Acquisitions by Foreign Investors* (2005 Order No.11 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on, and effective as of January 24, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=6131>, accessed October 3, 2012.

⁴²³ People's Republic of China, *Notice of the State Administration of Foreign Exchange on Relevant Issues of Registration of Overseas Investments Contributed by Domestic Individual Residents and Foreign Exchange Registration of Merger or Acquisition with Foreign Investments* (2005 Order No.29 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on, and effective as of April 8, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4141>, accessed October 3, 2012.

investment of PRC companies.⁴²⁴ The 2005 SAFE Circular 75 eventually confirmed the legality of these offshore SPVs employed by PRC companies for overseas listing, while actually creating more hurdles for the SPV listings of Mainland companies at the same time.

In 2007, SAFE further issued Circular 106, by which it was requested that a foreign exchange registration for round-trip investment must be supplemented by three years' financial statements from the domestic company. This meant that the domestic target company should have an operating history of three years at least.⁴²⁵ In mid-2011, SAFE promulgated another important circular, Circular 19, which provided guidance to further clarify the 2005 SAFE Circular 75 and 2007 SAFE Circular 106. The 2011 SAFE Circular 19 eliminated the three years' operational requirement of the domestic target company, and it simplified operational procedures for the 2005 SAFE Circular 75, which would facilitate the SPV listing of PRC companies to a certain degree.⁴²⁶

⁴²⁴ People's Republic of China, *Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Foreign Exchange Administration for Domestic Residents to Engage in Financing and in Return Investment via Overseas Special Purpose Companies* (2005 Order No.75 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on October 21, 2005, and effective as of November 1, 2005, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4616>, accessed October 3, 2012.

⁴²⁵ People's Republic of China, *Notice of the General Affairs Department of the State Administration of Foreign Exchange on Issuing the Operating Rules for the Notice of the State Administration of Foreign Exchange on the Relevant Issues about Foreign Exchange Control over the Financing and Return Investment of Domestic Residents through Overseas Special Purpose Companies* (2007 Order No.106 of General Affairs Department of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by State Administration of Foreign Exchange of the People's Republic of China on, and effective as of May 29, 2007, available at: <http://www.lawinfochina.com/display.aspx?id=6441&lib=law&SearchKeyword=&SearchCKeyword=%B9%D8%D3%DA%BE%B3%C4%DA%BE%D3%C3%F1%CD%A8%B9%FD%BE%B3%CD%E2%CC%D8%CA%E2%C4%BF%B5%C4%B9%AB%CB%BE%C8%DA%D7%CA%BC%B0%B7%B5%B3%CC%CD%B6%D7%CA%CD%E2%BB%E3%B9%DC%C0%ED%D3%D0%B9%D8%CE%CA%CC%E2%B5%C4%CD%A8%D6%AA>, accessed October 4, 2012.

⁴²⁶ People's Republic of China, *Circular of the State Administration of Foreign Exchange on Printing and Distributing the Operational Rules on Foreign Exchange Administration for Financing and Return Investments by Domestic Residents through Special-Purpose Overseas Companies* (2011 Order No.19 of the State

In contrast with SPV listing, listing on foreign stock exchanges by the Variable Interest Entity (VIE) structure has become widespread among Chinese companies in recent years. As mentioned in the former sections, very few Chinese companies under private ownership had enough economic strength to be qualified for listing on major foreign stock markets until the mid-1990s. In the late 1990s, some Chinese Internet companies started trying to list on American stock exchanges through the VIE structure.⁴²⁷ The concept of “VIE” is very similar to that of “SPV”, and it has been used by the United States Financial Accounting Standards Board (FASB) to refer to an entity in which the investor “holds a controlling interest that is not based on the majority of voting rights”.⁴²⁸ A main difference between the VIE and SPV is that an enterprise should consolidate the assets and liabilities of the VIE into its financial statements, when this enterprise is the primary beneficiary of such VIE.⁴²⁹

Technically, listing on foreign stock markets through the VIE structure is a compromise solution for Chinese companies, since foreign direct investment in some sectors such as value-added telecommunication services is subject to the investment restrictions of the Chinese government.⁴³⁰ Sina Corporation was the first Chinese company to

Administration of Foreign Exchange of the People’s Republic of China), promulgated by the State Administration of Foreign Exchange of the People’s Republic of China on May 20, 2011, effective as of July 1, 2011, available at: <http://www.lawinfochina.com/display.aspx?id=11320&lib=law&SearchKeyword=&SearchCKeyword=%BE%B3%C4%DA%BE%D3%C3%F1%CD%A8%B9%FD%BE%B3%CD%E2%CC%D8%CA%E2%C4%BF%B5%C4%B9%AB%CB%BE%C8%DA%D7%CA%BC%B0%B7%B5%B3%CC%CD%B6%D7%CA%CD%E2%BB%E3%B9%DC%C0%ED%B2%D9%D7%F7%B9%E6%B3%CC>, accessed October 4, 2012.

⁴²⁷ This method of overseas listing will be referred to as “VIE listing” hereinafter.

⁴²⁸ Financial Accounting Standards Board, FASB Interpretation No. 46: Consolidation of Variable Interest Entities (revised December 2003), available at: <http://www.fasb.org/pdf/fin%2046R.pdf>, accessed October 18, 2012.

⁴²⁹ Georgiades, George, *GAAP Financial Statement Disclosures Manual 2008-2009*, CCH, Chicago, 2008, p. 9.29.

⁴³⁰ In the early 1990s, foreign citizens and foreign companies were still prohibited from providing value-added

pioneer the VIE structure for listing on U.S. stock markets.

Generally, the overseas VIE listing of Sina Corporation can be divided into several steps, which include:⁴³¹

1. Sina's assets related to value-added telecom services were diverted into a new domestic Beijing Information Services Company, the shares of which were held by the Chief Executive Officer (CEO) and Chief Operating Officer (COO) of Sina, who were both Chinese citizens. Significantly, this said new domestic company held all necessary telecom licenses to operate in the value-added telecom services sector.
2. Then, the CEO and COO of Sina jointly created a new domestic Sina Interactive Advertising Agency, which had charge of all the advertisements business of Sina.
3. The Beijing Information Services Company and Sina Interactive Advertising Agency became the real *Operating Company* of Sina.
4. Sina established an offshore company in the Cayman Islands known as the *Controlling Company*.
5. The Controlling Company of Sina reached a series of contractual arrangements with Sina's Operating Company so as to obtain the substantial (or *de facto*) control of the Operating Company. These contractual arrangements were termed as "VIE

and basic telecoms services in China; but these kinds of regulations had been revised at a later time, and the value-added and basic telecoms services businesses have been classified into the Restricted Category in the latest *Catalogue of Industries for Guiding Foreign Investment*; see People's Republic of China, *Catalogue of Industries for Guiding Foreign Investment* (2011 Order No.12 of Ministry of Commerce and National Development and Reform Commission), Restricted Category, Section 5 (7), jointly promulgated by Ministry of Commerce and National Development and Reform Commission of the People's Republic of China on December 24, 2011, and effective as of January 30, 2012, available at: <http://www.lawinfochina.com/display.aspx?id=9125&lib=law>, accessed October 19, 2012.

⁴³¹ See also Gamble, William B., *Investing in Emerging Markets: The Rules of the Game*, Apress, New York, 2011, p. 79.

arrangements”.

6. The profits of Sina’s Operating Company were returned back to its Controlling Company, and the operation results of the Operating Company were also consolidated into the financial statements of the Controlling Company.

7. The Controlling Company of Sina finally listed on the NASDAQ.

After the successful VIE listing of Sina, this kind of VIE listing model created by Sina was gradually duplicated by more and more Chinese companies. Some commentators even argued that approximately half of the Chinese companies listed in the U.S. were using this kind of VIE structure by 2011.⁴³² It was gradually accepted by the Chinese government that these kinds of complex VIE structures used by Chinese companies listed overseas might hold hidden risks, since it allowed foreign investors to control China’s domestic companies even though they did not actually have any ownership in such companies.

On August 8, 2006, six PRC regulatory agencies including the CSRC announced the new Circular 10 on cross-border mergers and acquisitions,⁴³³ and the Ministry of Commerce further issued Circular 6 in 2009, so as to perfect the 2006 Circular 10.⁴³⁴

⁴³² The Economist, “China’s Murky Ownership Rules: Who Owns What?”, July 7, 2011, available at: <http://www.economist.com/node/18928526>, accessed October 20, 2012.

⁴³³ People’s Republic of China, *Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors* (2006 Order No.10 of China Securities Regulatory Commission, Ministry of Commerce, State Administration for Industry and Commerce, State Administration of Foreign Exchange, State Administration of Taxation and State Asset Supervision and Administration Commission of the People’s Republic of China), promulgated on August 8, 2006, and effective as of September 8, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=5420&lib=law&SearchKeyword=%B9%D8%D3%DA%CD%E2%B9%FA%CD%B6%D7%CA%D5%DF%B2%A2%B9%BA%BE%B3%C4%DA%C6%F3%D2%B5%B5%C4%B9%E6%B6%A8>, accessed October 4, 2012.

⁴³⁴ People’s Republic of China, *The Provisions on Merger and Acquisition of a Domestic Enterprise by Foreign*

These regulations, among other functions, had certain provisions that required offshore SPVs, formed for the purpose of acquiring PRC domestic companies and controlled by PRC individuals, to obtain the approval of the CSRC prior to listing their securities on an overseas stock exchange. Apart from the 2006 Circular 10, the SAFE 2007 Circular 106⁴³⁵ and SAFE 2011 Circular 19⁴³⁶ also played an important role in regulating the VIE overseas listing of Chinese companies.

There was rising concern that these Chinese companies listed on foreign stock markets by VIE structures might contain hidden legal risks, since a Chinese company might renege on its promises to the foreign partners, breaching the terms of the VIE contractual arrangements at very low cost.⁴³⁷ Besides, some foreign investors repeatedly questioned whether China's government would enact any

Investors by Ministry of Commerce (2009 Order No.6 of the Ministry of Commerce of the People's Republic of China), promulgated by the Ministry of Commerce of the People's Republic of China on, and effective as of June 22, 2009, available at: <http://www.lawinfochina.com/display.aspx?id=9547&lib=law&SearchKeyword=&SearchCKeyword=%B9%D8%D3%DA%CD%E2%B9%FA%CD%B6%D7%CA%D5%DF%B2%A2%B9%BA%BE%B3%C4%DA%C6%F3%D2%B5%B5%C4%B9%E6%B6%A8>, accessed October 4, 2012.

⁴³⁵ People's Republic of China, *Notice of the General Affairs Department of the State Administration of Foreign Exchange on Issuing the Operating Rules for the Notice of the State Administration of Foreign Exchange on the Relevant Issues about Foreign Exchange Control over the Financing and Return Investment of Domestic Residents through Overseas Special Purpose Companies* (2007 Order No.106 of General Affairs Department of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by State Administration of Foreign Exchange of the People's Republic of China on, and effective as of May 29, 2007, available at: <http://www.lawinfochina.com/display.aspx?id=6441&lib=law&SearchKeyword=&SearchCKeyword=%B9%D8%D3%DA%BE%B3%C4%DA%BE%D3%C3%F1%CD%A8%B9%FD%BE%B3%CD%E2%CC%D8%CA%E2%C4%BF%B5%C4%B9%AB%CB%BE%C8%DA%D7%CA%BC%B0%B7%B5%B3%CC%CD%B6%D7%CA%CD%E2%BB%E3%B9%DC%C0%ED%D3%D0%B9%D8%CE%CA%CC%E2%B5%C4%CD%A8%D6%AA>, accessed October 4, 2012.

⁴³⁶ People's Republic of China, *Circular of the State Administration of Foreign Exchange on Printing and Distributing the Operational Rules on Foreign Exchange Administration for Financing and Return Investments by Domestic Residents through Special-Purpose Overseas Companies* (2011 Order No.19 of the State Administration of Foreign Exchange of the People's Republic of China), promulgated by the State Administration of Foreign Exchange of the People's Republic of China on May 20, 2011, effective as of July 1, 2011, available at: <http://www.lawinfochina.com/display.aspx?id=11320&lib=law&SearchKeyword=&SearchCKeyword=%BE%B3%C4%DA%BE%D3%C3%F1%CD%A8%B9%FD%BE%B3%CD%E2%CC%D8%CA%E2%C4%BF%B5%C4%B9%AB%CB%BE%C8%DA%D7%CA%BC%B0%B7%B5%B3%CC%CD%B6%D7%CA%CD%E2%BB%E3%B9%DC%C0%ED%B2%D9%D7%F7%B9%E6%B3%CC>, accessed October 4, 2012.

⁴³⁷ See the case of Alibaba Group and Yahoo; Savitz, Eric, "Yahoo Discloses Jack Ma Takes Control Of Alipay From Alibaba", *Forbes*, May 11, 2011, available at: <http://www.forbes.com/sites/ericsavitz/2011/05/11/yahoo-discloses-jack-ma-takes-control-of-alipay-from-alibaba/>, accessed October 22, 2012.

regulation to prohibit VIE overseas listing in the future, or revoke the operating licenses of these domestic operating companies.

VI. SUMMARY

In this chapter, the legal framework of offshore listing for Mainland companies was reviewed. The special regulatory environment for overseas listed companies in China is highly likely to shape the characteristics of the corporate governance of Chinese companies. The case studies of six representative samples of Chinese companies will be undertaken in the next two chapters, in which the findings of the empirical research will also be represented.

CHAPTER 6. MAINLAND CHINESE CORPORATIONS LISTED ON THE NEW YORK STOCK EXCHANGE (NYSE): THE CASE STUDIES

As mentioned in Chapter 2, the New York Stock Exchange (NYSE) had its origins in the Button Agreement, which was signed by 24 stockbrokers and merchants in 1792 in New York City.⁴³⁸ In 1817, New York brokers drafted a constitution and formed the New York Stock & Exchange Board (NYS&EB) as a formal organisation. In 1863, the official title of the NYSE finally changed from The New York Stock & Exchange Board to the New York Stock Exchange.⁴³⁹

In fact, the NYSE was initially incorporated as a not-for-profit corporation in 1971. However, the merger between the NYSE and Archipelago Holdings, Inc. had transformed the NYSE Group, Inc. into a for-profit, publicly owned company on March 7, 2006.⁴⁴⁰ This merger was the largest ever consolidation among securities exchanges, as of 2006. However, this record was soon surpassed by the combination of the NYSE Group, Inc. and Euronext N.V. which occurred on April 4, 2007, and out of which the NYSE Euronext holding company was formed.⁴⁴¹

⁴³⁸ See New York Stock Exchange Euronext (NYSE Euronext), "First 24 NYSE Members", available at: <http://www.nyse.com/about/history/1089312755484.html>, accessed June 25, 2011.

⁴³⁹ NYSE Euronext, "Timeline-1863", available at: http://www.nyse.com/about/history/timeline_1860_1899_index.html, accessed June 25, 2011.

⁴⁴⁰ See NYSE Euronext, "NYSE Group, Inc. Corporate Family Tree", available at: http://www.nyse.com/about/history/timeline_2000_Today_index.html, accessed June 25, 2011.

⁴⁴¹ See NYSE Euronext, "NYSE Euronext Celebrates Completion of NYSE Group, Inc. / Euronext N.V. Merger", available at: <http://www.nyse.com/events/1175251256417.html>, accessed June 25, 2011.

The NYSE Euronext was established as the world's largest publicly traded exchange, as it created the first ever transatlantic global marketplace group.⁴⁴² The equities and derivatives exchanges of the NYSE Euronext spread across Europe and the United States, trading bonds, cash equities, futures, options, and fixed-income products.⁴⁴³ The merger of the NYSE Group and Euronext had enormous significance for the global financial markets. On the one hand the NYSE Euronext provided world-class companies an opportunity to raise capital globally, but on the other, the NYSE Euronext also accomplished a public listing of shares on the exchange itself. In addition, the new organisational structure of exchanges caused by the combination of cross-country exchanges created some issues for the national regulatory authorities, as they had no jurisdiction over those exchanges located in other countries.⁴⁴⁴

It seems that the globalisation trend of stock exchanges resumed with even greater intensity after the merger of the NYSE Group and Euronext, as the NYSE Euronext further completed the acquisition of the American Stock Exchange (Amex) in October 2008.⁴⁴⁵ Amex was one of the oldest stock exchanges in the United States and its history stretched back to 1790. In its pioneering days, Amex came to be known as an organisation for “curbstone brokers”, since these brokers were

⁴⁴² Lucchetti, Aaron; MacDonald, Alistair and Scannell, Kara, “NYSE, Euronext Set Plan to Form A Markets Giant”, *The Wall Street Journal*, June 2, 2006, available at: <http://online.wsj.com/article/SB114919826887369084.html>, accessed June 26, 2011.

⁴⁴³ See NYSE Euronext, “Global Products Fact Sheets”, available at: <http://www.nyse.com/about/publication/1234523935607.html>, accessed June 26, 2011.

⁴⁴⁴ Aggarwal, Reena; Ferrell, Allen and Katz, Jonathan, “U.S. Securities Regulation in a World of Global Exchanges”, *Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper No. 569*, 2006, p. 26, available at: http://lsr.nellco.org/harvard_olin/569, accessed June 26, 2011.

⁴⁴⁵ See NYSE Euronext, “NYSE Euronext Completes Acquisition of American Stock Exchange”, available at: <http://www.nyse.com/press/1222772889985.html>, accessed June 26, 2011.

generally doing business in the street.⁴⁴⁶ Due to the sustained efforts of these street-based brokers, the New York Curb Market was incorporated as a mutual organisation with formal listing standards in 1911. In 1953, the New York Curb Market was finally renamed the American Stock Exchange.⁴⁴⁷ The acquisition of Amex catapulted the NYSE Euronext into the third-largest U.S. options marketplace⁴⁴⁸ and further boosted its cash equities, closed-end funds, exchange traded funds (ETFs) and structured products.⁴⁴⁹ As a large proportion of bonds and stocks trading on the Amex were issued by small and micro-cap companies, Amex was soon integrated with the Alternext European small-cap exchange after the merger. Since then, Amex has been rebranded as the NYSE Amex Equities.⁴⁵⁰

Seemingly, the combination of major stock exchanges could indeed bring substantial benefits for both parties in terms of long-term value, as the NYSE Euronext had further submitted a proposal for a merger transaction with Deutsche Börse in early 2011.⁴⁵¹ The shareholders of the NYSE Euronext had approved this proposed merger at a special shareholders meeting held on July 07, 2011 in New York.⁴⁵²

⁴⁴⁶ Klein, Maury, *Rainbow's End: The Crash of 1929*, Oxford University Press, New York, 2003, Chapter 2.

⁴⁴⁷ Sobel, Robert, *AMEX: A History of the American Stock Exchange, 1921-1971*, Beard Books, Washington, D.C., 2000, Chapter 1 and Chapter 17; See also Sobel, Robert, *The Curbstone Brokers: The Origins of the American Stock Exchange*, Beard Books, Washington, D.C., 2000, Chapter VIII.

⁴⁴⁸ NYSE Euronext, "Timeline-2008", available at: http://www.nyse.com/about/history/timeline_2000_Today_index.html, accessed June 27, 2011.

⁴⁴⁹ McSherry, Mark, "NYSE Euronext to Acquire American Stock Exchange", *Reuters*, January 18, 2008, available at: <http://www.reuters.com/article/2008/01/18/sppage012-n17259645-oisbn-idUSN1725964520080118>, accessed June 26, 2011.

⁴⁵⁰ See NYSE Amex Equities, "History of NYSE Amex Equities", available at: <http://www.nyse.com/equities/nysealternextus/1218155408912.html>, accessed June 29, 2011.

⁴⁵¹ The Telegraph, "Deutsche Boerse Buys NYSE Euronext", *The Telegraph*, February 15, 2011, available at: <http://www.telegraph.co.uk/finance/markets/8326057/Deutsche-Boerse-buys-NYSE-Euronext.html>, accessed June 29, 2011.

⁴⁵² Merced, Michael J. De La, "NYSE Euronext Shareholders Approve Deal With Deutsche Börse", *The New York Times*, July 7, 2011, available at:

Deutsche Boerse, the operator of the Frankfurt stock exchange, would vote on the proposal at a later time. In addition, it would take time for American and European regulators to review this merger. With the success of this proposed merger transaction not beyond the realms of possibility, it might have created the world's largest stock exchange by virtue of its revenues and profits.⁴⁵³

The NYSE Euronext had always been a prime listing venue for most Chinese companies, and this was largely due to its solid reputation, high liquidity and stringent regulations. The Sinopec Shanghai Petrochemical Company Limited, which launched its IPO on the NYSE on July 26, 1993, was the first company originating in Mainland China to be listed on the NYSE.⁴⁵⁴ Subsequently, an increasing number of Chinese companies endeavoured to list on the NYSE in order to raise funds and expand their shareholder base. By May 2009, the Chinese companies that had listed on the NYSE Euronext totalled 70, while their average daily trading volumes had risen to 981,421,804.⁴⁵⁵ In addition, six Chinese closed-end funds had also been publicly traded on the NYSE Euronext.

<http://dealbook.nytimes.com/2011/07/07/nyse-uronext-shareholders-approve-deal-with-deutsche-borse/>, accessed July 10, 2011.

⁴⁵³ Spicer, Jonathan and Taylor, Edward, "Deutsche Boerse, NYSE in Talks as Merger Frenzy Grips", *Reuters*, February 9, 2011, available at: <http://www.reuters.com/article/2011/02/09/us-deutscheboerse-nyse-idUSTRE71845120110209>, accessed June 29, 2011.

⁴⁵⁴ See NYSE Euronext, Sinopec Shanghai Petrochemical Company Limited, Company Profile, available at: <http://www.nyse.com/about/listed/shi.html>, accessed June 30, 2011.

⁴⁵⁵ See NYSE Euronext, "NYSE Euronext and Greater China" (global market data cap. as of May 31, 2009), available at: http://www.nyse.com/pdfs/NYSEEuronext_China_factsheet-CN.pdf, accessed June 30, 2011; these statistics include the companies from Greater China, i.e. Mainland China, Hong Kong and Taiwan.

I. THE CHINA MOBILE LIMITED COMPANY (CHINA MOBILE)

a) Overview

The China Mobile Limited Company (hereinafter referred to as “China Mobile”)⁴⁵⁶ was one of the largest global mobile telecommunication companies and the company’s total number of mobile phone subscribers had reached approximately 570 million, as of 2010. China Mobile primarily provided a range of countrywide mobile voice and multimedia value-added services in Mainland China which covered 31 provinces, autonomous regions and directly administered municipalities, as well as the Hong Kong Special Administrative Region of the People’s Republic of China. Boasting a quality nationwide telecommunications network together with the world’s largest mobile customer base, China Mobile had been generally deemed as one of the most valuable state-owned telecommunication enterprises in the world.

By 2010, China Mobile still dominated the overall domestic mobile services market of Mainland China with a respectable 70 per cent market share. Although China Mobile began to offer third-generation (3G) telecommunication services employing the advanced TD-SCDMA⁴⁵⁷ standard from early 2009, around 97 per cent of its mobile customers still used its 2G services based on mature GSM⁴⁵⁸ technology, as

⁴⁵⁶ The stock symbol of China Mobile limited company on the NYSE is CHL, and on the HKEx is 0941.

⁴⁵⁷ Time Division Synchronous Code Division Multiple Access (TD-SCDMA) or UTRA / UMTS-TDD 1.28 Mcps Low Chip Rate (LCR), is an air interface found in UMTS mobile telecommunications networks in China as an alternative to W-CDMA.

⁴⁵⁸ GSM refers to Global System for Mobile Communications, the world’s most popular standard for mobile telephony systems.

of 2010.⁴⁵⁹ Besides, the Chinese Ministry of Industry and Information Technology had awarded China Mobile the essential license for the full deployment of the nationwide TD-SCDMA network in 2009.⁴⁶⁰

China Mobile was actually incorporated in Hong Kong on September 3, 1997, launching its Initial Public Offering (IPO) on the New York Stock Exchange (NYSE) on October 22, 1997, with the issue type American Depositary Receipts (ADRs). Simultaneously, it also listed on the Stock Exchange of Hong Kong (HKEx) on October 23, 1997. In early 1998, China Mobile was admitted as a constituent stock of the Hang Seng Index in Hong Kong. In 2009, China Mobile was again recognised on the Dow Jones Sustainability Indexes (DJSI). Recently, the company's credit rating was A+/Outlook Stable by Standard and Poor's, and A1/Outlook Positive by Moody's.

b) Corporate Structure and Ownership Structure

As of April 30, 2010, the substantial shareholder of China Mobile was China Mobile (Hong Kong) Group Limited, which indirectly held approximately 74.21 per cent of all outstanding shares of China Mobile through a wholly-owned subsidiary, China Mobile Hong Kong (BVI) Limited, where public investors owned the remaining

⁴⁵⁹ Figures taken from Su, Dan, "China Mobile Still Dominates, but Faces Competition in 3G", *Morningstar*, October 22, 2010, available at: <http://quicktake.morningstar.com/Stocknet/san.aspx?id=356385>, accessed January 10, 2011.

⁴⁶⁰ See Davis, Anita, "China Awards 3G Licences", *Campaign Asia-Pacific*, January 7, 2009, available at: <http://www.campaignasia.com/Article/208506,china-awards-3g-licences.aspx>, accessed January 10, 2011.

25.79 per cent of the ordinary shares.⁴⁶¹ Furthermore, all of the equity interests of China Mobile (Hong Kong) Group Limited were owned by China Mobile Communications Corporation (hereinafter referred to as “CMCC”), which was a state-owned company tightly controlled by the central government of Mainland China.⁴⁶² Significantly, no other investors held more than 5 per cent of the ordinary shares of China Mobile, with the statistics of Table 6.1 offering a clear illustration of the majority shareholders and their underlying shares in China Mobile.

⁴⁶¹ China Mobile Limited Company (China Mobile), *China Mobile Limited Company Annual Report 2010*, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed March 21, 2011.

⁴⁶² China Mobile, *China Mobile Limited Company Annual Report 2010*, Report of Directors section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed March 21, 2011.

Table 6.1 Majority Shareholders and Underlying Shares of China Mobile Limited Company 2000-2010
(all the interests in issued shares of China Mobile amounting to 5% or more of the ordinary shares in issue)

Year	Name of Company	Ordinary Shares Held		Percentage of Total Shareholding
		Directly	Indirectly	
2000	China Mobile Communications Corporation (CMCC)		14,062,602,396	75.58%
	China Mobile (Hong Kong) Group Limited (CMHK Group)		14,062,602,396	75.58%
	China Mobile Hong Kong (BVI) Limited (CMHK BVI)	14,062,602,396		75.58%
2001	CMCC		14,062,602,396	75.58%
	CMHK Group		14,062,602,396	75.58%
	CMHK BVI	14,062,602,396		75.58%
2002	CMCC		14,890,116,842	75.69%
	CMHK Group		14,890,116,842	75.69%
	CMHK BVI	14,890,116,842		75.69%
2003	CMCC		14,890,116,842	75.69%
	CMHK Group		14,890,116,842	75.69%
	CMHK BVI	14,890,116,842		75.69%
2004	CMCC		14,890,116,842	75.58%
	CMHK Group		14,890,116,842	75.58%
	CMHK BVI	14,890,116,842		75.58%
2005	CMCC		14,890,116,842	75.07%
	CMHK Group		14,890,116,842	75.07%

	CMHK BVI	14,890,116,842		75.07%
2006	CMCC		14,890,116,842	74.57%
	CMHK Group		14,890,116,842	74.57%
	CMHK BVI	14,890,116,842		74.57%
2007	CMCC		14,890,116,842	74.33%
	CMHK Group		14,890,116,842	74.33%
	CMHK BVI	14,890,116,842		74.33%
2008	CMCC		14,890,116,842	74.25%
	CMHK Group		14,890,116,842	74.25%
	CMHK BVI	14,890,116,842		74.25%
2009	CMCC		14,890,116,842	74.22%
	CMHK Group		14,890,116,842	74.22%
	CMHK BVI	14,890,116,842		74.22%
2010	CMCC		14,890,116,842	74.21%
	CMHK Group		14,890,116,842	74.21%
	CMHK BVI	14,890,116,842		74.21%

Source: Adapted from China Mobile Limited Company 2000-2010 Annual Reports⁴⁶³

⁴⁶³ Available at: <http://www.chinamobileltd.com/ir.php?menu=3>, Report of the Directors section, accessed April 2, 2011; see also China Mobile, U.S. Securities and Exchange Commission (SEC) Filings FORM 20-F (Annual Reports), available at: <http://secfilings.nyse.com/files.php?symbol=CHL&fg=24>, accessed April 15, 2011.

In the interim period before 2000, the Ministry of Information Industry (MII) indirectly held approximately 75 per cent of equity interest in China Mobile via several subsidiaries including China Telecom Hong Kong Group Limited, The Directorate General of Telecommunications and Telpo Communications Group Limited.⁴⁶⁴ After 2000, the share ownership structure of China Mobile reflected that China Mobile Communications Corporation (CMCC) steadily owned an aggregate of about 75 per cent of all issued and outstanding share capital through two subsidiaries: CMHK Group and CMHK BVI. Table 6.1 clearly shows that the general share ownership structure of China Mobile remained almost unchanged between 2000 and 2010, with CMCC the blockholder for this entire period. According to the Memorandum and Articles of Association of China Mobile, CMCC did not have different voting rights when compared with other shareholders in the same class.⁴⁶⁵ Nevertheless, China Mobile was actually dominated by CMCC since all other public shareholders only held a small percentage of shares.

As CMCC was also an SOE, the state owner actually never relaxed its firm hold on China Mobile. It seems that the recent split share reforms, which were aimed at improving the undeveloped ownership structure of major Chinese SOEs, had no substantial influence on China Mobile. The government had shown no signs of changing the ownership structure of China Mobile, since that might have resulted in

⁴⁶⁴ China Mobile, *China Mobile Limited Company Annual Reports 1997-1999*, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed April 12, 2011.

⁴⁶⁵ See China Mobile, *SEC Filings FORM 20-F 2010*, Item 7. Major Shareholders and Related Party Transactions, available at: http://secfilings.nyse.com/filing.php?doc=1&attach=ON&ipage=6998180&rid=23#rom74967_11, accessed April 20, 2011.

a change of control. Generally, the Chinese government had a strong tendency towards exerting tight control over key SOEs such as China Mobile, since this would suit the government-controlled financial system.

As stated in Proposition 2, it seems that the corporate governance patterns of China Mobile generally reflect a typical insider-based control system model since there were no other shareholders that held more than 5 per cent of the total equity interests, apart from CMCC. It is arguable that China Mobile would not have major corporate governance problems arising from the separation of ownership and management, since the ownership structure of China Mobile was highly concentrated. Notwithstanding, the majority shareholder control mechanism could also give rise to other corporate governance problems. Since CMCC had enduring interests in China Mobile, it tended to hold positions on the board of directors or exert undue influence upon the appointment of other senior managerial posts. As the relationships between the management and CMCC were close and stable, it would be very difficult to prevent CMCC and the management from infringing the interests of minority shareholders.

In the current social and political climate of Mainland China, the Party's determination would virtually play a decisive role when it came to the nomination of the top management personnel of major SOEs. To a great extent, SOEs had been employed as a major instrument in Mainland China that could cater for the central

government's intention of maintaining social stability. With China's economy largely controlled by the government, Chinese SOEs dominated most industries on the Mainland from heavy and light industries to routine consumer products. The dominance of SOEs in the food supply industry and other public essential services such as transportation, telecommunication and energy supply had broad implications for the lives of most Chinese people. Furthermore, the SOEs still enjoyed a significant share of the tax contributions to the government. In addition, SOEs remained the largest employers in Mainland China.⁴⁶⁶

As mentioned in Proposition 3, it could be argued that political factors determined the nature of corporate governance in China's listed companies, especially for large Chinese SOEs such as China Mobile. Several academics have advanced theories to explain the political preconditions of corporate governance. It was stated that the social democracies of certain political environments actually pressed managers to stabilise employment, or managed to avoid work forces being downsized even when the firm's production capabilities could not align with the markets.⁴⁶⁷ This kind of theory should help to explain why the management of large SOEs in China could not always pursue the goals of the maximisation of shareholders' profits. The circumstances of corporate governance in Mainland China were quite similar to those of continental social democratic countries in some respects, as the means of

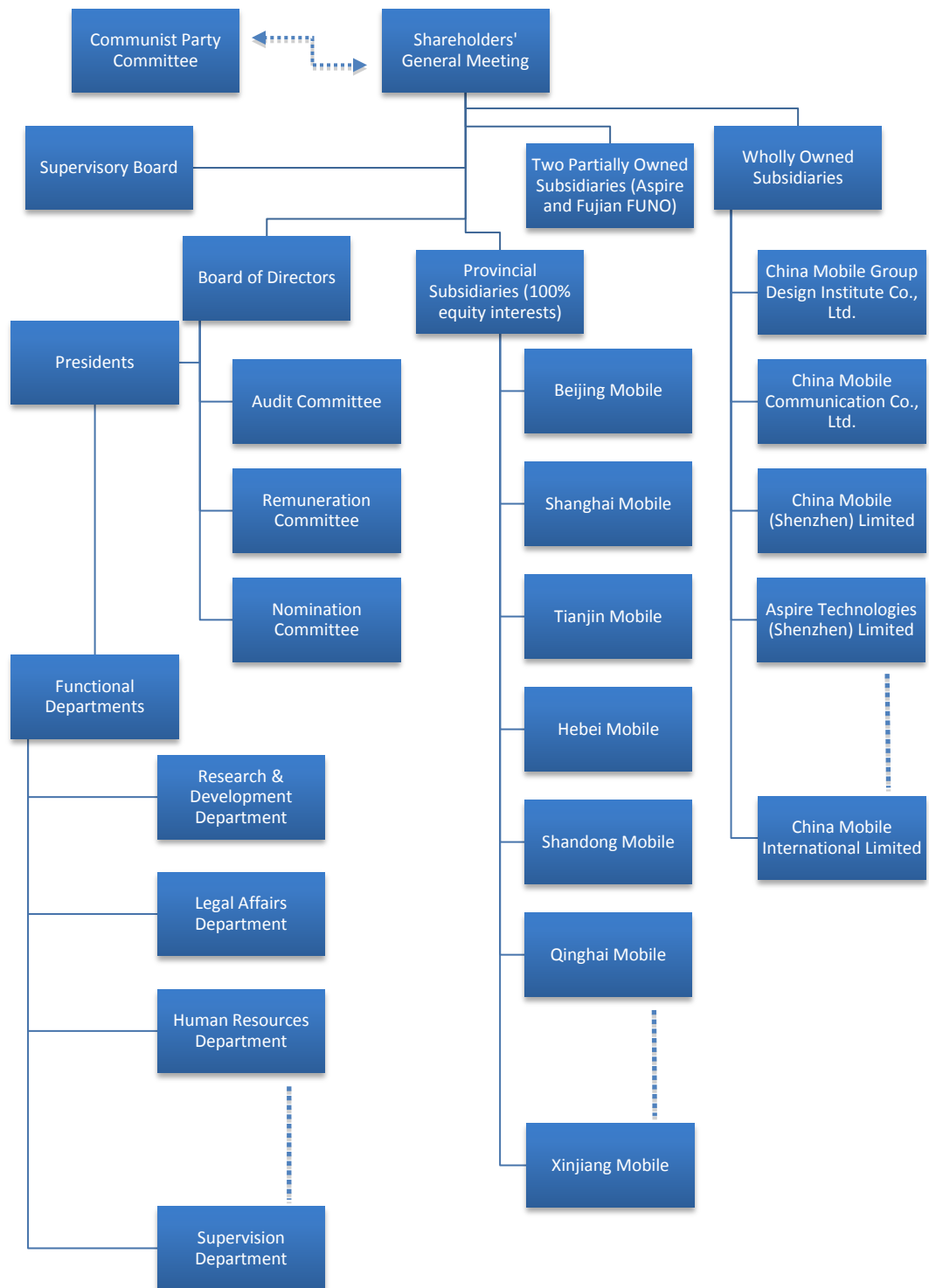
⁴⁶⁶ Lin, Yi-min and Zhu, Tian, "Ownership Reform and Corporate Governance: The Case of China's State-Owned Enterprises", *The 8th SJE International Symposium on Corporate Governance and Restructuring in East Asia*, August 25, 2000, available at: <http://econ.snu.ac.kr/~ecores/activity/00sympo/>, accessed April 20, 2011.

⁴⁶⁷ Roe, Mark J., "Political Preconditions to Separating Ownership from Corporate Control", *Stanford Law Review*, Vol. 53, No. 3, 2000, p. 539.

incentive compensation and transparent accounting were all fairly weak. Moreover, the market for corporate control had also been undervalued to a great extent in China. When the ownership concentration brought about expensive agency costs in public firms in Europe, China's major SOEs generally bore much higher managerial agency costs than their counterparts in other countries. Technically, the greater discretion of senior management in Chinese SOEs was another factor that made these steep agency costs more unreasonable.

As China Mobile is one of the biggest SOEs in China, its corporate structure is large and complicated. The governance structure of China Mobile has been complied in Table 6.2 below.

Table 6.2 Corporate Structure of China Mobile Limited Company



Source: Adapted from China Mobile Limited Company's website, available at: <http://www.chinamobileltd.com/en/about/overview.php>, accessed December 15, 2012.

According to the structure illustrated in Table 6.2, it seems that China Mobile has a well-developed governance structure. When the board of directors is appointed at the shareholders' general meeting, the board then designates the president of China Mobile. Establishing board sub-committees has become a matter of routine in almost all of China's large SOEs as required by the CSRC, and China Mobile has an audit and remuneration committee, as well as a nomination committee. Furthermore, a supervisory board has also been set up in compliance with the 2006 Company Law of China.⁴⁶⁸ As China Mobile provides telecommunication services nationwide, it has a few dozen fully owned provincial subsidiaries, while several investment holding companies have been correspondingly established in the British Virgin Islands so as to facilitate management.⁴⁶⁹

Apart from these provincial subsidiaries, China Mobile has also held 100 per cent equity interests via investment holding companies in a number of other subsidiaries including China Mobile Group Design Institute Co., Ltd., China Mobile Communication Co., Ltd., China Mobile (Shenzhen) Limited, Aspire Technologies (Shenzhen) Limited, Aspire Information Network (Shenzhen) Limited, Aspire Information Technologies (Beijing) Limited, Advanced Roaming & Clearing House Limited, China Mobile Hong Kong Company Limited (CMHK) and China Mobile

⁴⁶⁸ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 118, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

⁴⁶⁹ See China Mobile, *China Mobile Limited Company Annual Report 2010*, Notes to the Financial Statements section, Investment in Subsidiaries, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed May 1, 2011.

International Limited. These subsidiaries were responsible for the provision of various telecommunication services such as network design, roaming clearance, platform development and mobile data solutions. Moreover, China Mobile respectively owned a 66.41 per cent and 51 per cent shareholding in Aspire Holdings Limited and Fujian FUNO Mobile Communication Technology Company Limited, respectively. With the former of these two companies an investment holding company incorporated in the Cayman Islands, the latter provided network technology support for clients.

Nevertheless, the CMCC had the *de facto* right to appoint most members to the board of directors since it owned approximately 75 per cent of the total shares in China Mobile. As the central government had CMCC under its influence, China Mobile was still a typical Chinese SOE dominated by a state shareholder, and while the Communist Party Committee could not be termed as a formal organ of listed companies, it actually plays a decisive role in most important events in the vast majority of China's SOEs. The existence of the Party Committee facilitated the Party's participation in China Mobile matters, but it also detrimentally affected the productiveness of the governance structure of China Mobile.

With the telecommunications industry in China dominated by three state-run companies,⁴⁷⁰ China Mobile was the largest mobile phone operator with a market

⁴⁷⁰ These are China Telecom, China Unicom and China Mobile; see Devan, Alexis, "Triple Play in the Chinese Telecommunications Sector", *Associated Content from YAHOO*, April 21, 2010, available at:

share of 69.3 per cent in Mainland China.⁴⁷¹ In fact, China's government had the inclination to keep its tenacious hold on the mobile telecommunications network by investing in China Mobile and the subsidiaries of China Mobile. As the telecommunications sector had generally been perceived as a key area that was closely related to the national economy and social well-being,⁴⁷² there was no sign that the dominant shareholding of government in China Mobile would be considerably diminished in the foreseeable future.

c) Board Composition and Supervisory Board Composition

Since the CMCC was the dominant shareholder in China Mobile, the government had the *de facto* rights to appoint most members to the board of directors of China Mobile. On occasion, the Party Committee might also seek to influence corporate management by nominating their preferred board candidates.

The board of directors of China Mobile consisted of twelve members by 2010, and all directors were subject to re-election at the annual general shareholders' meetings at least once every three years.⁴⁷³ Outwardly, the board structure of China Mobile fulfilled the requirements of Article 109 of China's new Company Law, as the

http://www.associatedcontent.com/article/2909222/triple_play_in_the_chinese_telecommunications.html?cat=15, accessed April 25, 2011.

⁴⁷¹ See China Mobile, *Company Profile*, available at: <http://www.chinamobileltd.com/about.php?menu=1>, accessed April 25, 2011.

⁴⁷² Harwit, Eric, *China's Telecommunications Revolution*, Oxford University Press, New York, 2008, p. 183.

⁴⁷³ See China Mobile, *China Mobile Limited Company Annual Report 2010*, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed April 26, 2011.

number of directors was not excessive. Three independent non-executive directors had been recruited into the board as required by the 2006 Company Law of China,⁴⁷⁴ but this did not really attain the one-third standards set by the Guidelines for Independent Directors.⁴⁷⁵ In broad terms, the executive directors were mainly selected internally from within China Mobile and its subsidiaries. The candidates for executive director were expected to have previous management experience and technical expertise in the telecommunications industry, whereas the non-executive directors were required to have individual independence as well as considerable experience or expertise in business management.⁴⁷⁶ As a general rule, the nomination committee assumed the responsibility to identify and nominate member candidates for the board.

The composition of the board of China Mobile indicated that WANG Jianzhou, the chairman of the board of directors, was actually in charge of the overall management of the entire China Mobile group. It is noteworthy that Wang was also sitting as the chairman of the CMCC, the ultimate controlling shareholder of China Mobile. Furthermore, all other executive directors held senior management positions in

⁴⁷⁴ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 123, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed September 22, 2012.

⁴⁷⁵ People's Republic of China, *Establishment of Independent Director Systems by Listed Companies Guiding Opinion* (2001 Order No.102 of China Securities Regulatory Commission of the People's Republic of China), Article 1-3, promulgated by China Securities Regulatory Commission of the People's Republic of China on, and effective as of August 16, 2001, available at: <http://www.chinalawandpractice.com/Article/1880871/Channel/9950/Establishment-of-Independent-Director-Systems-by-Listed-Companies-Guiding-Opinion.html>, accessed January 10, 2011.

⁴⁷⁶ See China Mobile, *China Mobile Limited Company Annual Report 2010*, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed April 26, 2011.

China Mobile including vice president, chief executive office and chief financial officer. Interestingly, the composition of the three board sub-committees was identical, as these committees were all comprised of the three independent non-executive directors. As has been mentioned in earlier chapters, stewardship theory was focused on the socio-psychological factors of corporate governance, with the assumption that the directors' behaviour was largely aligned with the shareholders' interests. Seemingly, the governance structures of most large Chinese companies, especially those giant SOEs such as China Mobile, owed much to stewardship theory. With the theory offering more discretion for directors and executives to allow for the facilitation of their organisational functions, the empowering governance mechanisms arguably assisted China's companies in attaining improved performance. In fact, these politically appointed directors of large Chinese SOEs were treated as government officials to some extent, and the Chinese government placed them under obligation to be faithful stewards of the state.⁴⁷⁷

As the appointment of a supervisory board was mandatory in the 2006 Company Law of China, there seems no conceivable reason for China Mobile to be the exception. Unfortunately, there was no reference to the composition or role of the supervisory board in the annual reports from China Mobile.

⁴⁷⁷ This typical governance structure of China's SOEs has been termed as "state-stewardship theory" by some scholars, see Liang, Hao; Renneboog, Luc and Sun, Sunny Li, *A State-Stewardship View on Executive Compensation*, July 24, 2013, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2297859, accessed November 5, 2013, p. 1.

It seems that China Mobile had a well-designed governance structure under superficial review; however, it was unable to withstand close scrutiny. When the dominant state blockholders themselves had appointed preferable directors, the interests of the minority shareholders could not be truly represented on the board. Significantly, almost all executive directors had previous working experience in governmental agencies of Mainland China.⁴⁷⁸ By reviewing their professional histories, it seems that all three independent directors had served in various positions with Hong Kong's government bodies or well-regarded financial institutions. It was arguable that these independent directors could take a positive role in the corporate governance of China Mobile, since they did not lack essential management experience and professional expertise. Notwithstanding, the effectiveness of independent directors is rather questionable given the current legal and political circumstances of China. With shareholder derivative litigation having been tightly restricted in Mainland China, there was no real market for corporate control either. It was argued by some commentators that the mechanism of independent directors would not truly present difficulties for a dominant state shareholder to exercise control over the listed companies, as large shareholding was the only known working approach to monitor management.⁴⁷⁹ As argued in Proposition 5, traditional Chinese corporate governance ideas would probably remain strong in China Mobile.

⁴⁷⁸ See China Mobile, *China Mobile Limited Company Annual Report 2010*, Biographies of Directors and Senior Management section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed April 30, 2011.

⁴⁷⁹ Clarke, Donald C., "The Independent Director in Chinese Corporate Governance", *Delaware Journal of Corporate Law*, Vol. 31, No. 1, 2006, p. 217.

d) Related Party Transactions

Related party transactions were a common occurrence in most of China's large listed SOEs, as these enterprises and their subsidiaries generally operated as a conglomerate. Related party transactions have been termed as a kind of severe problem in the corporate governance of China's listed companies, since they are unfair to minority shareholders in the majority of cases.⁴⁸⁰ Technically, the related party transactions enabled the dominant shareholders to expropriate the interests of minority shareholders, or even jeopardise the interests of the company. By connected deals, companies could tunnel or support profits via selling assets to related parties at an unreasonable price. This also allows the company to misreport their accounting numbers so as to mislead the public investors, such as occurred in the infamous collapse of Enron.

It was disclosed in the annual reports that China Mobile and each of its subsidiaries had entered into various related party transactions, and that the terms of these connected deals were generally based on an arm's length basis.⁴⁸¹ The related party transactions of China Mobile covered most common telecommunication services, such as international roaming arrangements, inter-provincial transmission line leasing and platform development, etc. In July 2004, China Mobile acquired several telecommunications assets from the CMCC in order to decrease the amount of

⁴⁸⁰ Tomasic, Roman A. and Andrews, Neil, "Minority Shareholder Protection in China's Top 100 Listed Companies", *The Australian Journal of Asian Law*, Vol. 9, No. 1, 2007, p. 105.

⁴⁸¹ See China Mobile, *SEC Filings FORM 20-F 2010*, Item 7. Major Shareholders and Related Party Transactions, available at: http://secfilings.nyse.com/filing.php?doc=1&attach=ON&ipage=7561861&rid=23#rom176207_10, accessed May 2, 2011.

related party transactions, and the related agreements between China Mobile and the CMCC were consolidated into two agreements in late 2004 so as to further streamline the management of the connected transactions.⁴⁸²

It seems that China Mobile had made a number of detailed disclosures of related party transactions, as required by the listing rules of foreign stock exchanges. However, the appropriateness of these connected deals still deserves further examination or even revisiting. It was questionable whether the interests of minority shareholders had been well protected in these connected transactions, as the ownership structure of China Mobile was a typical majority block shareholding and therefore the board of directors could not be considered as independent. It was particularly worrying that WANG Jianzhou, the chairman of the board of China Mobile, also acted as chairman of the CMCC, which was the substantial shareholder of China Mobile. This situation had been classified as one of the typical non-independent relationships in the independence criteria of the OECD.⁴⁸³

Article 217 S.4 of China's Company Law indicated that the related-party relationship generally referred to the relationship between the company's controlling shareholders, *de facto* controllers, directors, supervisors, executives and the

⁴⁸² See China Mobile, *SEC Filings FORM 20-F 2010*, Item 7. Major Shareholders and Related Party Transactions, Miscellaneous, available at: http://secfilings.nyse.com/filing.php?doc=1&attach=ON&ipage=7561861&rid=23#rom176207_10, accessed May 2, 2011.

⁴⁸³ Organization for Economic Co-operation and Development (OECD), "Guide on Fighting Abusive Related Party Transactions in Asia", October 25, 2010, available at: http://www.oecd.org/document/55/0,3746,en_2649_34813_46092023_1_1_1_1,00.html, accessed May 10, 2011.

enterprises they controlled either directly or indirectly. In addition, related-party relationship also referred to other relationships that might result in the transfer of resources or obligations. Nevertheless, the parastatal entities such as SOEs and Government-owned Corporations (GOCs), which were owned by a government holding agency, would not be recognised as representing a related-party relationship since they were all controlled by the state.⁴⁸⁴ With the absence of any provisions with respect to related-party relationships in China's old Company Law, it seems that the new law had compensated for this oversight. However, Mr K (Interviewee No.11) considered the disclosure of related-party transactions to be of dubious benefit to most minority shareholders, since the majority of giant China's companies – especially those of strategic value – were all parastatal. Thus, such companies were exempt from the stipulations of Article 217.

With the State controller electing most executive directors, it also played a dominant role in the nomination of independent directors. Significantly, the State shareholder could exert sufficient influence over the incentive structures of independent directors, such as remuneration policy. Whether independent directors could really represent the interests of minority shareholders in the process of approving related party transactions was open to doubt, since the loyalties of independent directors were highly questionable.

⁴⁸⁴ People's Republic of China, *Company Law of the People's Republic of China* (2005 Order No.42 of the President of the People's Republic of China), Article 217 S.4, amended and adopted at the 18th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006, available at: <http://www.lawinfochina.com/display.aspx?id=4685&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%B%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%B9%AB%CB%BE%B7%A8>, accessed November 5, 2013.

e) Stakeholders and Corporate Governance

According to the relevant documents of China Mobile, sustainability strategy was adopted in their development so as to create sustainable value, and due attention had been paid to the interests of the stakeholder.⁴⁸⁵ Customers, shareholders and investors, employees, regulatory authorities, value chain partners, industry peers and the public had all been termed as stakeholders by China Mobile. Technically, the annual reports of China Mobile made no reference to the issue of stakeholders. However, China Mobile issued annual sustainability reports from 2005, so as to give a full account of their performance of sustainable development as well as social responsibility. Seemingly, China Mobile was performing well in terms of protecting the interests of stakeholders, since it was recognised on the Dow Jones Sustainability Indexes for three consecutive years from 2008 to 2010. Furthermore, China Mobile had also been admitted to the Hang Seng Corporate Sustainability Index Series in mid-2010.⁴⁸⁶

Employees had been traditionally considered as one of the most important stakeholders, who could even have a significant influence on the capital structure decisions of a company.⁴⁸⁷ It was stated that China Mobile valued employees'

⁴⁸⁵ China Mobile, *China Mobile Limited Company Sustainability Report 2010*, p. 7, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed May 10, 2011.

⁴⁸⁶ China Mobile, *China Mobile Limited Company Annual Report 2010*, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed March 10, 2011.

⁴⁸⁷ Bae, Kee-Hong; Kang, Jun-Koo and Wang, Jin, "Employee Treatment and Firm Leverage: A Test of the Stakeholder Theory of Capital Structure", *Journal of Financial Economics*, Vol. 100, Issue 1, 2011, p. 133.

interests as one of their key social responsibilities, and that it used its best endeavours to promote the careers of employees. Moreover, two-tier employee representative committee meeting systems at the provincial and municipal levels had been established so as to give employees the opportunity to participate in corporate decision-making.⁴⁸⁸ However, it was highly questionable whether the employee representative committee could play a material role in the corporate governance of China Mobile, since the employee representatives were actually appointed by senior management in most instances in Chinese SOEs.

By evaluating the reports, it could be seen that sizeable input of resources into employee welfare from China Mobile. The company had made considerable investment to strengthen workplace health and safety management, and these measures would likely make a contribution towards reducing industrial accidents. Moreover, employees of China Mobile could also obtain benefits and insurance coverage. It was said that special aid funds had been established in more than two-thirds of China Mobile's provincial subsidiaries in order to provide support to those employees in difficulty.⁴⁸⁹ In terms of the career development of employees, China Mobile devised a training evaluation system so as to provide employees with extensive training courses.

⁴⁸⁸ China Mobile, *China Mobile Limited Company Sustainability Report 2010*, p. 13, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed May 15, 2011.

⁴⁸⁹ China Mobile, *China Mobile Limited Company Sustainability Report 2010*, p. 13, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed May 15, 2011.

In fact, the maturity of employee welfare facilities in China Mobile was predictable, since China Mobile was still a government-dominated SOE that virtually operated in the traditional sense. To a certain extent, most of China's large SOEs actually bore heavier pension burdens and wider obligations of social welfare when compared with their foreign counterparts,⁴⁹⁰ since a modern social security system had not yet been developed in Mainland China. While the coverage of the public pension system in China was at the time still quite low, its investment return rates were also unattractive.⁴⁹¹ In such a circumstance, the desirable social welfare provided by large Chinese SOEs could be termed as a main attraction to most candidates. Hence, it was only natural for China's large SOEs to further strengthen this advantage in order to recruit more quality employees.

Significantly, China Mobile no longer directly paid pensions or other post-retirement benefits to its retirees after the SOE reform. The subsidiaries of China Mobile in Mainland China were required to contribute to defined contribution retirement plans that were managed by local municipal governments. This kind of contribution from China Mobile was set at fixed rates of the employees' salary costs. Furthermore, some Mainland subsidiaries of China Mobile even made contributions to retirement plans operated by insurance companies, as a supplement to the mandatory

⁴⁹⁰ Holz, Carsten A., *China's Industrial State-Owned Enterprises: Between Profitability and Bankruptcy*, World Scientific Publishing Co. Pte. Ltd., Singapore, 2003, p. 93.

⁴⁹¹ Salditt, Felix; Whiteford, Peter and Adema, Willem, "Pension Reform in China: Progress and Prospects", *OECD Social, Employment and Migration Working Papers No. 53*, section 8.1, available at: http://www.oecd.org/LongAbstract/0,3425,en_2649_33933_38757040_1_1_1_1,00.html, accessed June 5, 2011.

governmental retirement plans.⁴⁹² In addition, China Mobile and its subsidiaries in Hong Kong had engaged in the Mandatory Provident Fund Scheme in accordance with the Hong Kong Mandatory Provident Fund Schemes Ordinance,⁴⁹³ which was a retirement plan organised by independent trustees. All those employed by China Mobile under the jurisdiction of the Hong Kong Employment Ordinance were covered by this retirement scheme.⁴⁹⁴

In general, China Mobile had made due allowance for the interests and welfare of employees, ranging from health care to employee assistance programs and special aid funds. The establishment of contribution retirement schemes for SOEs on the Mainland could also relieve China Mobile of some of the responsibilities of social security, which should have been assumed by the government. In Hong Kong, China Mobile also provided well-managed welfare packages to employees in compliance with the relevant Hong Kong law, and this could be partly attributable to the soundness of the social welfare system as well as the fairness of judiciary in Hong Kong.

Aside from giving due consideration to the interests of employees, China Mobile also paid attention to the expectations of other stakeholders. China Mobile developed internal mechanisms, such as Issue Analysis and Dialogue Management, to improve

⁴⁹² See China Mobile, *China Mobile Limited Company Annual Report 2010*, p. 83, (u) Employee Benefits, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed June 5, 2011.

⁴⁹³ See Hong Kong, *Hong Kong Mandatory Provident Fund Schemes Ordinance*, Section 7 and 7A, 7AA, 7AB, available at: <http://www.hkllii.org/hk/legis/en/ord/485/>, accessed June 5, 2011.

⁴⁹⁴ See China Mobile, *China Mobile Limited Company Annual Report 2010*, p. 114, section 34 Employee Retirement Benefits, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed June 5, 2011.

communication and engagement with stakeholders. Furthermore, China Mobile constantly developed new technologies so as to improve network quality and promote customer satisfaction. In 2004, China Mobile launched the Village Connected Project, under which all administrative villages in Mainland China were covered. The mobile network of China Mobile had been expanded to include most rural areas in Mainland China by the end of 2010.⁴⁹⁵ In addition, China Mobile devised the Green Action Plan, the emphasis of which was energy conservation and emissions reduction. The implementation of this plan indicated that China Mobile had put special efforts into minimising its impact on the environment. Significantly, China Mobile established a general corporate strategy towards the information society, by which the informatisation of healthcare, education and daily lives in Mainland China would be largely promoted. In terms of charities, China Mobile founded the China Mobile Charity Foundation in 2009. In 2010, this Foundation donated a total of RMB 20.2 million to support education and disadvantaged groups.⁴⁹⁶

In light of the description of the China Mobile Sustainability Reports, it is arguable that China Mobile gave a fair account of itself in promoting the interests of stakeholders. Indeed, China Mobile had made some attempts to strike a balance between itself and its stakeholders, with the intention of fulfilling its corporate social

⁴⁹⁵ China Mobile, *China Mobile Limited Company Sustainability Report 2010*, p. 24, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed June 8, 2011.

⁴⁹⁶ China Mobile, *China Mobile Limited Company Sustainability Report 2010*, p. 43, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed June 8, 2011.

responsibilities. In a conventional sense, China's large SOEs would generally offer very generous benefits to their employees and retirees.⁴⁹⁷ However, the majority of China's SOEs tended to pay little regard to the interests of other stakeholders in making corporate decisions. Therefore, the Sustainability Reports from China Mobile were a favourable sign which indicated that the valued role of other stakeholders had been gradually brought within the corporate governance of China Mobile.

It seems that China Mobile showed signs of improvement in corporate governance in terms of giving due consideration to the interests of stakeholders. However, there is no certainty whether there was any causal relationship between overseas listing and this improvement, as the "Section 303A Corporate Governance Listing Standards" and the "FAQs Regarding 303A - Corporate Governance Standards" released by the NYSE made no specific reference to the interests of stakeholders.⁴⁹⁸ In actual fact, most of China's listed companies attempted to give a superficial impression that they had made every endeavour to take account of the interests of all stakeholders, respecting the fact that more scholars and practitioners had advocated stakeholder value in recent years.⁴⁹⁹ Somehow this trend could be termed as a solid movement

⁴⁹⁷ Li, Shaomin; Lin, Yingchou and Selover, David D., "Chinese State-Owned Enterprises: Why Aren't They Efficient?", July 16, 2010, p. 8 and p. 35, available at: www.econ.sinica.edu.tw/upload/file/0607_2.pdf, accessed June 10, 2011.

⁴⁹⁸ See New York Stock Exchange, *NYSE Listed Company Manual - Section 303A Corporate Governance Listing Standards and FAQs Regarding 303A - Corporate Governance Standards* (revised January 4, 2010), available at: <http://www.nyse.com/regulation/nyse/1101074746736.html>, accessed June 10, 2011; neither article 303A.09 Corporate Governance Guidelines nor article 303A.10 Code of Business Conduct and Ethics make mention of the stakeholder issue.

⁴⁹⁹ Charreaux, Gérard and Desbrières, Philippe, "Corporate Governance: Stakeholder Value versus Shareholder Value", *Journal of Management and Governance*, Vol. 5, No. 2, 2001, p. 107.

in corporate governance for Chinese companies, since it was generally believed that a company could not obtain value maximisation if it ignored the interests of its stakeholders.⁵⁰⁰

Mr J (Interviewee No.10) was somewhat cynical about whether the provisions of the new Company Law – in regard to corporate social responsibility – would really bring tangible benefits to stakeholders. He proposed that protection of the interests of stakeholders, or even social communities, was definitely not one of the main concerns of Chinese companies at this stage. The fact remains that the vast majority of Chinese companies would not overextend themselves through taking account of corporate social responsibility issues, as it was widely considered that this could negatively impact company performance.

China Mobile made detailed accounts of its corporate governance practices in the relevant sections of its annual reports. As a company listed both on the HKEx and NYSE, some corporate governance principles and policies of China Mobile did not completely conform with the Section 303A corporate governance listing standards established by the NYSE Listed Company Manual, which were supposed to be followed by U.S. companies. These differences were also elaborated in the annual reports of China Mobile.⁵⁰¹

⁵⁰⁰ Jensen, Michael C., "Value Maximization, Stakeholder Theory, and the Corporate Objective Function", *Business Ethics Quarterly*, Vol. 12, No. 2, 2002, p. 235.

⁵⁰¹ See China Mobile, *China Mobile Limited Company Annual Report 2010*, p. 38, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed June 15, 2011.

In 2010, a major change in the corporate governance of China Mobile was that LI Yue had taken over the role of Chief Executive Officer (CEO) vacated by WANG Jianzhou, and that Wang would remain as the chairman of China Mobile.⁵⁰² This practice was a significant departure from the traditional governance principles of China's large SOEs. In the conventional sense, the same individual, who was politically appointed by senior government officials, would perform the roles of both chairman and CEO in major Chinese SOEs. To a great extent, this governance improvement of China Mobile was made in response to the Code on Corporate Governance Practices of the HKEx, as the responsibilities between the chairman and CEO were required to be clearly divided under the provisions of this Code.⁵⁰³

It was argued by some commentators that separating the roles of chairman and CEO could reinforce the effectiveness of the corporate board to a certain degree, when the formative context of each company must be taken into account.⁵⁰⁴ However, several other scholars suggested that the costs of separating the titles of chairman and CEO actually outweighed its advantages for most large companies.⁵⁰⁵ Moreover, it warrants mention that statistics showed the same person occupied the roles of chairman of the board and CEO in around 75 per cent of the Standard & Poor's 500

⁵⁰² See China Mobile, *China Mobile Limited Company Annual Report 2010*, p. 38, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed July 10, 2011.

⁵⁰³ See Hong Kong Stock Exchange, *Main Board Listing Rules*, Appendix 14: Code on Corporate Governance Practices, Section A.2.1, available at: <http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/vol2.htm>, accessed July 10, 2011.

⁵⁰⁴ Kakabadse, Andrew; Kakabadse, Nada K. and Barratt, Ruth, "Chairman and Chief Executive Officer (CEO): That Sacred and Secret Relationship", *Journal of Management Development*, Vol. 25, No. 2, 2006, p. 135.

⁵⁰⁵ Brickley, James A.; Coles, Jeffrey L. and Jarrell, Gregg, "Leadership Structure: Separating the CEO and Chairman of the Board", *Journal of Corporate Finance*, Vol. 3, Issue 3, 1997, p. 189.

companies in the U.S.⁵⁰⁶ By comparison, the principle that the leadership of the board should be split with the executive roles for the company's management had been applied by the vast majority of U.K. companies,⁵⁰⁷ since the UK Combined Code 2008 plainly stated that the same individual should not exercise the roles of chairman and CEO.⁵⁰⁸ Although more American companies have moved towards the separation of chairman and CEO positions in recent years,⁵⁰⁹ the listing standards of the NYSE did not set forth any provision on this issue.⁵¹⁰

Unfortunately, the question of whether the separation of chairman and CEO would bring any improvement in corporate governance for China Mobile could still be doubted, as WANG still served as the chairman of the parent company of China Mobile.⁵¹¹ As a general rule the Central Organization Department of Communist Party preserved the virtual control over personnel decisions of the parent companies of these major Chinese SOEs such as China Mobile, since such state companies with multi-billion dollar market capitalisation had a high position in China's economy.

⁵⁰⁶ Keenan, Jack, "Corporate Governance in UK / USA Boardrooms", *Corporate Governance: An International Review*, Vol. 12, Issue 2, 2004, p. 173.

⁵⁰⁷ Coombes, Paul and Wong, Simon Chiu-Yin, "Chairman and CEO—One Job or Two?", *The McKinsey Quarterly*, No. 2, 2004, p. 43; according to the data, the positions of chairman and CEO are held by different individuals in about 95 per cent of FTSE 350 companies in the UK.

⁵⁰⁸ See Financial Reporting Council (FRC), *UK Combined Code 2008*, Provisions A.2.1, available at: <http://www.frc.org.uk/corporate/ukcgcode.cfm>, accessed July 15, 2011; and FRC, *The UK Corporate Governance Code (May 2010)*, Provisions A.2.1, available at: <http://www.frc.org.uk/corporate/ukcgcode.cfm>, accessed July 15, 2011.

⁵⁰⁹ Grinstein, Yaniv and Valles, Yearim, "Separating the CEO from the Chairman Position: Determinants and Changes after the New Corporate Governance Regulation", March 2008, p. 29, available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1108368, accessed July 20, 2011.

⁵¹⁰ See New York Stock Exchange, *NYSE Listed Company Manual - Section 303A Corporate Governance Listing Standards*, available at: <http://usequities.nyx.com/regulation/listed-companies-compliance/corporate-governance>, accessed July 20, 2011.

⁵¹¹ China Mobile (Hong Kong) Group Limited is the parent company of China Mobile, as it indirectly holds about 74.21 per cent of China Mobile's share capital through a wholly-owned subsidiary, China Mobile Hong Kong (BVI) Limited.

Hence, WANG could have a greater say over the CEO in the crucial management issues of China Mobile, such as senior executive appointments, as he was actually backed by the Party. Ultimately, the chairman of China Mobile probably had unrestrained powers of decision-making.

According to the records of the board meetings and board committees' meetings of China Mobile, it seems that most directors and independent directors performed their duties conscientiously, notwithstanding that some directors had been absent on a number of occasions.⁵¹² With all the directors of China Mobile having disclosed their interests in the annual report, the regulation laid down in the Hong Kong Main Board Listing Rules governing the directors' securities transactions had been also adopted by China Mobile.⁵¹³ There was good reason to believe that a number of preventive measures had been taken by China Mobile in order to avoid any conflicts of interests.

In the summer of 2002, the Sarbanes–Oxley Act was enacted by the U.S. congress in the wake of a number of major corporate and accounting scandals.⁵¹⁴ Not only did these scandals devastate the share prices of the affected companies, including Enron, Tyco International and WorldCom, they also undermined the public's confidence in

⁵¹² See China Mobile, *China Mobile Limited Company Annual Report 2010*, p. 40, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed July 25, 2011.

⁵¹³ Hong Kong Stock Exchange, *Main Board Listing Rules*, Appendix 10: Model Code for Securities Transactions by Directors of Listed Issuers, available at: <http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/vol2.htm>, accessed July 25, 2011.

⁵¹⁴ United States of America, *The Sarbanes-Oxley Act of 2002*, Public Law No. 107-204, 116 Stat. 745, enacted as of July 30, 2002, available at: <http://www.gpo.gov/fdsys/pkg/PLAW-107publ204/content-detail.html>, accessed July 27, 2011.

the American securities markets. The enactment of the Sarbanes–Oxley Act was widely seen as an attempt to restore investor confidence by establishing enhanced corporate accountability standards for listed companies.

Section 406 of the Sarbanes–Oxley Act introduced a code of ethics for listed companies, by which senior financial officers and principal accounting officers were required to adhere to a high standard of business ethics when performing their management duties. Accordingly, this requirement in respect of the ethics code had been incorporated into the corporate governance standards of the NYSE Listed Company Manual.⁵¹⁵ The said code of ethics was adopted by China Mobile in 2004, and had been filed with the U.S. Securities and Exchange Commission (SEC).⁵¹⁶ In fact, China Mobile was not required to adopt such a similar ethics code under the applicable law or listing rules of Hong Kong. It was hoped such a code would contribute to the prevention of wrongdoings of senior executives for China Mobile.

Under the provisions of Section 404 of the Sarbanes–Oxley Act, the annual reports provided by each listed company must include an internal control report, and an assessment of the effectiveness of the company’s internal control structure should be contained in this report.⁵¹⁷ In accordance with the said requirement of Section 404,

⁵¹⁵ See New York Stock Exchange, *NYSE Listed Company Manual - Section 303A.00 Corporate Governance Standards* (approved November 25, 2009), 303A.10 Code of Business Conduct and Ethics, available at: <http://nysemanual.nyse.com/lcm/>, accessed August 20, 2011.

⁵¹⁶ See China Mobile, *China Mobile (Hong Kong) Limited Code of Ethics for Covered Officers*, available at: www.chinamobileltd.com/images/pdf/terms/CodeofEthics_eng.pdf, accessed July 27, 2011.

⁵¹⁷ United States of America, *The Sarbanes-Oxley Act of 2002*, Public Law No. 107-204, 116 Stat. 745, enacted as of July 30, 2002, Section 404, available at: <http://www.gpo.gov/fdsys/pkg/PLAW-107publ204/content-detail.html>, accessed July 28, 2011.

the internal audit department of China Mobile carried out internal audit tests on the internal control structure, as well as the internal control procedures of China Mobile.⁵¹⁸ These internal audit tests not only facilitated the issuance of the internal control report for China Mobile, but also lent further assurances to the accuracy of the information over the financial reporting of China Mobile.

In addition, the registered accounting firm KPMG had been employed as the external auditors by China Mobile. Apart from providing audit services for the interim and annual consolidated financial statements for China Mobile, KPMG also audited and attested to the internal control assessment made by the management of China Mobile according to the regulation of Section 404 (b) of the Sarbanes–Oxley Act. In addition, KPMG rendered other non-audit services such as tax services and Sarbanes–Oxley Act advisory services to China Mobile, which were subject to the pre-approval of the Audit Committee. In light of the well-established reputation of KPMG, their engagement as external auditors would arguably bring extra quality assurance to the financial reporting of China Mobile, despite the considerable service fees.⁵¹⁹

For listed public companies, their internal control system played an important role in safeguarding the assets and resources of the company, as well as helping ensure the reliability of financial reporting and compliance with applicable laws. The internal

⁵¹⁸ See China Mobile, *China Mobile Limited Company Annual Report 2010*, p. 43, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed July 29, 2011.

⁵¹⁹ China Mobile paid RMB 95 million in total to KPMG as audit and non-audit fees in 2010; see China Mobile, *China Mobile Limited Company Annual Report 2010*, p. 44, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed July 30, 2011.

control system had been identified as a key element of corporate governance by the Committee of Sponsoring Organizations of the Treadway Commission (COSO),⁵²⁰ where Section 404 of the Sarbanes–Oxley Act expressly introduced rules for improving internal control in American public companies. Similarly, the Financial Reporting Council (FRC) of the U.K. also issued the Turnbull guidance in order to set out best practice on internal control for U.K. listed companies.⁵²¹

In accordance with Section 404 of the Sarbanes–Oxley Act, the board of directors of China Mobile assumed responsibility for establishing an internal control system as well as regularly reviewing the effectiveness of the internal control. Like many of their American counterparts, China Mobile adopted the model internal control framework issued by COSO, which was named the “Internal Control - Integrated Framework”. The internal control system of China Mobile would make a valuable contribution towards facilitating business management and operations, as well as deterring misstatement and fraud in financial reporting. In addition, a comprehensive risk management framework had also been established with the aim of reducing the negative effect of risks, and this risk framework mainly focused on the high risk areas of business. The employment of the management information system was another characteristic of the internal control system of China Mobile, by which the

⁵²⁰ See Committee of Sponsoring Organizations of the Treadway Commission (COSO), *Internal Control - Integrated Framework*, available at: <http://coso.org/IC-IntegratedFramework-summary.htm>, accessed August 1, 2011; this framework has been widely used in the United States.

⁵²¹ Financial Reporting Council (FRC), *The Turnbull Guidance on Internal Control (October 2005)*, available at: <http://www.frc.org.uk/corporate/internalcontrol.cfm>, accessed August 1, 2011; the Turnbull Guidance has been identified by the U.S. Securities and Exchange Commission (SEC) as a suitable framework for complying with the U.S. requirements to report on internal controls over financial reporting.

accountability of China Mobile's internal controls would be reinforced to a certain degree.⁵²²

When the Generally Accepted Accounting Principles (GAAP) had been adopted in the financial reporting of China Mobile according to the regulations of the NYSE, the board of directors of China Mobile still executed an annual review of the information disclosure controls. In broad terms, it was safe to assume that the internal controls of China Mobile were effective, while the disclosure procedures of financial information were reasonable.

As China Mobile had been defined as a foreign private issuer under the relevant American securities law,⁵²³ China Mobile was not required to fully comply with the corporate governance practices issued by the NYSE. Instead, China Mobile could follow the governance practices of its home country, China. In fact, China Mobile adopted some corporate governance practices of Hong Kong, since it was also listed on the HKEx.

Pursuant to the rules of Section 303A.11 of the NYSE Listed Company Manual, listed foreign private issuers had to take responsibility to disclose the significant differences between their corporate governance practices and those followed by

⁵²² See China Mobile, *China Mobile Limited Company Annual Report 2010*, p. 45, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed August 5, 2011.

⁵²³ See United States of America, *The Securities Exchange Act of 1934*, 48 Stat. 881, enacted as of June 6, 1934, codified at 15 United States Code § 78a et seq., §240.3b-4: Definition of "foreign government", "foreign issuer" and "foreign private issuer", available at: <http://www.sec.gov/about/laws/secrulesregs.htm>, accessed August 5, 2011.

American domestic companies under the NYSE listing standards.⁵²⁴ Accordingly, China Mobile presented a full description of these differences in governance practices in its annual reports.

As of 2010, China Mobile had twelve directors in total, of which three members could be defined as independent directors according to the director independence standards of the Hong Kong Listing Rules. However, American domestic listed companies were actually required to have a majority of independent directors according to Section 303A.01 of the NYSE Listed Company Manual. Besides, the independence standards for directors established by the Hong Kong Listing Rules were slightly different from those stipulated by the NYSE Listed Company Manual. As a general rule, the presence of independent directors on the board could help to enhance the quality of board oversight, protecting the interests of shareholders, or even maximising social welfare.⁵²⁵ Nevertheless, other empirical research demonstrated that the relationship between independent directors and the corporate performance of China's companies was not strong, especially under the current unformed institutional environment of Mainland China.⁵²⁶ When taking these environmental and practical considerations into account, it seems that the composition of the board of China Mobile was tenable, since more independent

⁵²⁴ See New York Stock Exchange, *NYSE Listed Company Manual - Section 303A.00 Corporate Governance Standards* (approved November 25, 2009), 303A.11 Foreign Private Issuer Disclosure, available at: <http://nysemanual.nyse.com/lcm/>, accessed August 6, 2011.

⁵²⁵ Gordon, Jeffrey N., "The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices", *Stanford Law Review*, Vol. 59, Issue 6, 2007, p. 1465.

⁵²⁶ Clarke, Donald C., "The Independent Director In Chinese Corporate Governance", *Delaware Journal of Corporate Law*, Vol. 31, No. 1, 2006, p. 217.

directors would not necessarily produce greater independence for the board of China Mobile, nor improve the corporate governance or financial performance of China Mobile.

By Section 303A.07 of the NYSE Listed Company Manual, the role and responsibilities of the audit committee in a listed company had been considered as highly demanding. Hence, it would be desirable if the number of audit committees on which the audit committee members of a listed company served were strictly under control, as this could ensure their time commitment attendant to audit committee membership.⁵²⁷ Unfortunately, the Hong Kong Stock Exchange made no stringent provision in respect of such simultaneous service of audit committee members. Technically, China Mobile did not make any disclosure in its annual reports of whether the members of its audit committee served on the audit committees of several public companies simultaneously.

The audit committee of China Mobile was comprised of three members: Dr. LO Ka Shui, Mr Frank WONG Kwong Shing and Dr. Moses CHENG Mo Chi. In actual fact, these three members, who were all independent non-executive directors, simultaneously sat on a number of committees in several listed companies. Dr. LO, the chairman of the audit committee, served on the audit committee of four other

⁵²⁷ Section 303A.07 of NYSE Listed Company Manual provides that if an audit committee member simultaneously serves on the audit committees of more than three public companies, the board must determine that such simultaneous service would not impair the ability of such a member to effectively serve on the listed company's audit committee, and must disclose such determination.

public companies in 2010;⁵²⁸ Mr WONG served as a member of the audit committee in the Industrial and Commercial Bank of China Limited;⁵²⁹ And Dr. CHENG held a position on the audit committees of other seven public companies as of 2011.⁵³⁰

In summary, two out of the three audit committee members of China Mobile served on the audit committees of more than three public companies. Only Wong sat on the audit committee of one other company, which met the requirements for simultaneous service set out by the NYSE Listed Company Manual. According to the annual reports of China Mobile, it seems that these three audit committee members could give their due attention to the work of the audit committee in China Mobile, as all of them had attended the four audit committee meetings that were held in 2010.⁵³¹ Nevertheless, such onerous simultaneous service would arguably impair the ability of these members to effectively perform their duties on the audit committee of China Mobile to a certain degree.

⁵²⁸ Dr. LO Ka Shui is chairman of the audit committee of Shanghai Industrial Holdings Limited; a member of the audit committee of The Hongkong and Shanghai Banking Corporation Limited; a member of the audit committee of Phoenix Satellite Television Holdings Limited; and a member of the audit committee of TOM Online Inc.; see Bloomberg Businessweek, Great Eagle Holdings Ltd, Executive Profile - LO Ka Shui, available at: <http://investing.businessweek.com/businessweek/research/stocks/people/person.asp?personId=8096143&ticker=41:HK&previousCapId=368157&previousTitle=CHINA%20MOBILE%20LTD>, accessed August 10, 2011.

⁵²⁹ See Bloomberg Businessweek, Bank ICBC Indonesia, Executive Profile - WONG Kwong Shing, available at: <http://investing.businessweek.com/businessweek/research/stocks/private/person.asp?personId=52806441&previousCapId=29290957&previousCapId=368157&previousTitle=CHINA%20MOBILE%20LTD>, accessed August 11, 2011.

⁵³⁰ Dr. Moses CHENG Mo Chi is a member of the audit committee in Liu Chong Hing Investment Ltd.; a member of the audit committee in Kader Holdings Co. Ltd.; a member of the audit committee in Guangdong Investment Ltd.; a member of the audit committee in Tian An China Investments Co. Ltd.; a member of the audit committee in China Resources Enterprise Ltd.; a member of the audit committee in Towngas China Company Limited; and a member of the audit committee in ARA Asset Management Limited; See Bloomberg Businessweek, Kader Holdings Co. Ltd., Executive Profile - CHENG Mo Chi, available at: <http://investing.businessweek.com/businessweek/research/stocks/people/person.asp?personId=7673053&ticker=180:HK&previousCapId=368157&previousTitle=CHINA%20MOBILE%20LTD>, accessed August 11, 2011.

⁵³¹ See China Mobile, *China Mobile Limited Company Annual Report 2010*, p. 40, Corporate Governance Report section, available at: <http://www.chinamobileltd.com/ir.php?menu=3>, accessed August 13, 2011.

As stated above, there were real grounds to believe that China Mobile had endeavoured to conform to the applicable U.S. and Hong Kong laws, as well as the listing rules of these foreign stock exchanges. Indeed, some aspects of China Mobile's corporate governance had been correspondingly improved by the process of foreign listing. These facts substantiate the statement of Proposition 4 to some degree. Unfortunately, China's government still played a dominant role in the corporate governance structure of China Mobile. As China Mobile was a major SOE in the telecommunication industry of Mainland China, there was a slim chance the government might relinquish its influence over China Mobile. As Proposition 3 asserted, relevant political factors largely determined the nature of corporate governance in China Mobile. Furthermore, the likelihood was that traditional Chinese corporate governance notions would remain quite strong in China Mobile, which could lend support to the argument of Proposition 5.

II. THE PETROCHINA COMPANY LIMITED (PETROCHINA)

a) Overview

PetroChina Company Limited (hereinafter referred to as "PetroChina")⁵³² was an oil and gas producer and purveyor in Mainland China, headquartered in Beijing. Technically, it was the listed arm of the state-owned China National Petroleum Corporation (hereinafter referred to as "CNPC"). As the largest oil producer in China,

⁵³² The stock symbol of PetroChina Company Limited on the NYSE is PTR, on the HKEx is 0857, and on the Shanghai Stock Exchange (SSE) is 601857.

PetroChina was also the most valuable company by market capitalisation in the world as of 2010.⁵³³ PetroChina, along with its subsidiaries, were engaged in a range of petroleum related products and services covering the exploration, development, production and marketing of crude oil and natural gas. In recent years, PetroChina further expanded the business by branching out into the fields of petrochemical product refining, derivative petrochemical product development and the building of transmission pipelines.

PetroChina was originally established as a joint stock company in Mainland China under the *Special Provisions of the State Council Concerning the Floatation and Listing Abroad of Stocks by Limited Stock Companies*⁵³⁴ on November 5, 1999, as part of the restructuring programme of the CNPC.⁵³⁵ Most assets of the CNPC, together with its liabilities related to crude oil, natural gas and derivative chemicals businesses had been injected into PetroChina during the restructuring. As PetroChina, together with the China Petroleum & Chemical Corporation (Sinopec), near dominated the wholesale and retail business of oil and gas products in Mainland China, PetroChina had made healthy profits every year since its inception.⁵³⁶

⁵³³ See Xie, Jingwei, "FT: PetroChina World's Most Valuable Company", *China Daily*, May 31, 2010, available at: http://www.chinadaily.com.cn/china/2010-05/31/content_9912238.htm, accessed January 10, 2011.

⁵³⁴ People's Republic of China, *Special Provisions of the State Council Concerning the Floatation and Listing Abroad of Stocks by Limited Stock Companies* (1994 Order No.160 of the State Council of the People's Republic of China), adopted at the 22nd executive meeting of the State Council of the People's Republic of China on, and effective as of August 4, 1994, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=707>, accessed April 26, 2012.

⁵³⁵ See PetroChina Company Limited, *Company Profile*, available at: http://www.petrochina.com.cn/Ptr/About_PetroChina/Company_Profile/, accessed January 10, 2011.

⁵³⁶ See Wikinvest, PetroChina's Annual Income Statement, available at: http://www.wikinvest.com/stock/PetroChina_Company_%28PTR%29/Data, accessed January 10, 2011.

PetroChina launched its IPO on the NYSE on April 6, 2000, as American Depositary Shares (ADSs). At the same time, it was listed on the HKEx as H shares on April 7, 2000. Several years later, PetroChina announced its plans to issue stocks on the SSE. After its flotation on the Shanghai stock market on November 5, 2007, PetroChina became the world's first company to reach one trillion dollar market capitalisation,⁵³⁷ while on December 10, 2007, the Hang Seng Index Services Company admitted PetroChina as a Hang Seng Index Constituent Stock.

b) Corporate Structure and Ownership Structure

The Ministry of Petroleum Industry of China, the predecessor of the CNPC, was founded in July 1955 to undertake the exploration of petroleum and gas resources in China. On September 17, 1988, the CNPC was established on the basis of the Ministry of Petroleum Industry, as a state-owned petroleum company endowed with certain government administrative responsibilities. In the mid-1990s, the State Council of China launched the restructuring of the CNPC, in order to match the ongoing economic and enterprise reforms in Mainland China.⁵³⁸ The CNPC was reorganised into an integrated company group with businesses covering the upstream and downstream operations of petroleum and gas. In 1998, the CNPC pooled its best

⁵³⁷ Watts, Jonathan and Wearden, Graeme, "PetroChina Makes Its Debut as World's First Trillion-Dollar Firm", *The Guardian*, November 6, 2007, available at: <http://www.guardian.co.uk/business/2007/nov/06/china>, accessed January 10, 2011.

⁵³⁸ See PetroChina Company Limited (PetroChina), *PetroChina Company Limited Annual Report 2010*, p. 14, Changes in Share Capital and Information on Shareholders (5), available at: http://www.petrochina.com.cn/Ptr/Investor_Relations/Periodic_Reports/Annual_Report/, accessed September 8, 2011.

performing assets and injected them into a newly established company, which was PetroChina. To a great extent, the establishment practice of PetroChina was an accepted procedure for most transformed Chinese SOEs, as this could facilitate their listing on foreign stock exchanges, as well as domestic listings.

Table 6.3 Subsidiaries of China National Petroleum Corporation (CNPC)

CNPC	Subsidiaries of CNPC	
Holding Companies	PetroChina Company Limited	
	CNPC Finance Company Limited	
	China Huaming International Investment Corporation	
	CNPC Assets Management Company Limited	
	Jilin Fuel Ethanol Company Limited	
Specialised Companies	CNPC Technical Service Company	
	CNPC Engineering & Construction Company	
	CNPC Manufacturing Company	
Joint Stock Companies	PetroChina Hutchison Information Technology Co., Ltd.	
	Guotai Jun'an Securities Co., Ltd.	
	Guotai Jun'an Investment Management Co., Ltd.	
	The Eighth Construction Company of CNPC, Ltd.	
	BOC International (China) Limited	
	China Yangtze Power Co., Ltd.	
Enterprises and Public Institutions	Oil and Gas Field Enterprises	Daqing Petroleum Administration, etc. (10 companies)
	Refining and Chemicals Companies	Daqing Petroleum and Petrochemical Complex, etc. (10 companies)
	Technical Service Companies	CNPC Xibu Drilling Engineering Company Limited, etc. (7 companies)

	Engineering and Construction Companies	China Oil and Gas Pipeline Company Limited, etc. (5 companies)
	Equipment Manufacturing Companies	CNPC Technology & Development Company Limited, etc. (5 companies)
	Overseas Companies	China National Oil and Gas Exploration and Development Corporation, etc. (7 companies)
	Research Institutions	CNPC Economics & Technology Research Institute, etc. (8 companies)
	Other Companies	CNPC Engineering Consulting Company Limited (CNPC Advisory Center), etc. (6 companies)

Source: Adapted from China National Petroleum Corporation Annual Reports - CNPC Subsidiaries section⁵³⁹

⁵³⁹ China National Petroleum Corporation (CNPC), *China National Petroleum Corporation Annual Reports*, available at: <http://www.cnpc.com.cn/en/aboutcnpc/>, accessed September 27, 2011.

As illustrated in Table 6.3, PetroChina Company Limited was one of five holding companies of the CNPC. It is noteworthy that only two of these companies operated in the petroleum industry, while other three were actually investment companies. These subsidiaries aside, the CNPC held substantial equity interests in several dozen subsidiaries, wholly owned or partially owned. Apart from three specialised engineering and technical service subsidiaries, the CNPC was also the parent company of 58 enterprises and public institutions. The vast majority of these enterprises were engaged in the petroleum and petrochemical industries, and their businesses ranged from oil equipment manufacture, oil field administration and oil refinement to exploration technology research and development.

Table 6.4 Majority Shareholders and Shareholdings of PetroChina Company Limited 2000-2010
(all the interests in issued shares of PetroChina amounting to 1% or more of the shares in issue)

Year	Name of Shareholders	Nature of Shares	Number of Shares Held	Percentage of Total Shareholding	Increase / Decrease of Shares
2000	China National Petroleum Corporation (CNPC)	State-owned Shares	158,241,758,000	90.00%	/
	BP Investments China Limited*	H Shares	3,516,484,000	2.00%	/
	Franklin Resources, Inc.	H Shares	2,470,114,000	1.40%	/
	Templeton International, Inc.**	H Shares	2,460,528,000	1.39%	/
	Templeton Global Advisors, Ltd.	H Shares	2,116,744,000	1.20%	/
2001	CNPC	State-owned Shares	158,241,758,000	90.00%	/
	BP Investments China Limited*	H Shares	3,516,484,000	2.00%	/
	Franklin Resources, Inc.	H Shares	2,098,818,212	1.19%	-371,295,788
	Templeton International, Inc.**	H Shares	2,043,244,993	1.16%	-417,283,007
2002	CNPC	State-owned Shares	158,241,758,000	90.00%	/
	BP Investments China Limited*	H Shares	3,516,484,000	2.00%	/
2003	CNPC	State-owned Shares	158,241,758,000	90.00%	/
	BP Amoco Plc.	H Shares	3,516,484,000	2.00%	/
	Warren E. Buffett	H Shares	2,347,761,000	1.335%	/
2004	CNPC	State-owned Shares	158,241,758,000	90.00%	/
	Credit Suisse Group	H Shares	2,774,536,979	1.578%	/
	Warren E. Buffett	H Shares	2,347,761,000	1.335%	/
2005	CNPC	State-owned Shares	157,922,077,818	88.21%	-319,680,182
	Warren E. Buffett	H Shares	2,347,761,000	1.311%	/
2006	CNPC	State-owned Shares	157,922,077,818	88.21%	/

	J.P. Morgan Chase & Co.	H Shares	2,595,035,030	1.449%	/
	Warren E. Buffett	H Shares	2,347,761,000	1.311%	/
2007	CNPC	State-owned Shares	157,922,077,818	86.29%	/
	HKSCC Nominees Limited***	H Shares	20,937,754,152	11.44%	/
2008	CNPC	State-owned Shares	158,164,597,259	86.42%****	+242,519,441
	HKSCC Nominees Limited***	H Shares	20,869,519,699	11.40%	-68,234,453
	J.P. Morgan Chase & Co.	H Shares	2,329,725,346	1.27%	/
2009	CNPC	State-owned Shares	157,764,597,259	86.20%****	-400,000,000
	HKSCC Nominees Limited***	H Shares	20,819,411,829	11.38%	-50,107,870
2010	CNPC	State-owned Shares	157,764,597,259	86.20%****	/
	HKSCC Nominees Limited***	H Shares	20,801,208,420	11.37%	-18,203,409
	J.P. Morgan Chase & Co.	H Shares	1,996,347,016	1.09%	/

Source: Adapted from PetroChina Company Limited 2000-2010 Annual Reports⁵⁴⁰

* Note: BP Global Investments Limited has the same holdings through BP Investments China Limited. BP Amoco Plc. also has the same holdings through BP Global Investments Limited and BP Investments China Limited.

** Includes holdings of shares through Templeton Global Advisors, Ltd.

*** HKSCC Nominees Limited is a subsidiary of the Hong Kong Stock Exchange and its principal business is to act as nominee on behalf of shareholders.

**** The number of shares excludes the H shares indirectly held by CNPC through Fairy King Investments Limited, an overseas wholly-owned subsidiary of CNPC; these H shares were held in the name of HKSCC Nominees Limited.

⁵⁴⁰ See PetroChina, *PetroChina Company Limited Annual Reports 2000-2010*, available at: http://www.petrochina.com.cn/Ptr/Investor_Relations/Periodic_Reports/Annual_Report/, accessed September 11, 2011; also PetroChina, *U.S. Securities and Exchange Commission (SEC) Filings FORM 20-F (Annual Reports)*, Major Shareholders and Related Party Transactions section, available at: <http://secfilings.nyse.com/files.php?symbol=PTR&fg=24>, accessed September 11, 2011.

The major shareholders of PetroChina and their respective shareholdings from 2000 to 2010 are illustrated in Table 6.4. As PetroChina is a typical Chinese company that evolved from a traditional state-owned enterprise, it has still been inevitably placed under the firm grip of China's central government. The CNPC, a state-authorised investment company,⁵⁴¹ as well as a state-owned enterprise directly controlled by the central government, had always been the dominant shareholder of PetroChina throughout this ten year period, during which it actually held a large block holding of the equity interest of PetroChina.

Table 6.4 also shows that some foreign companies and individuals such as BP Investments, China Limited and Warren E. Buffett became major shareholders in PetroChina between 2000 and 2006, although they were not expected to materially affect the control of PetroChina since their holding in PetroChina never exceeded 2 per cent. Besides, HKSCC Nominees Limited, a wholly-owned member of the HKEx group, held approximately 11 per cent of the shares of PetroChina from 2007 to 2010. However, HKSCC Nominees Limited merely acted as nominee on behalf of shareholders;⁵⁴² thus, CNPC's position as the dominant shareholder of PetroChina was still secure.

⁵⁴¹ The registered capital of CNPC is about RMB 297,870.99 million.

⁵⁴² Over 70 per cent of the shares on the HKEx in quantity terms have been deposited into HKEx's Central Clearing and Settlement System (CCASS), and all the shares held in CCASS are registered in the name of HKSCC Nominees Limited; see Hong Kong Stock Exchange, Frequently Asked Questions, Chapter 4 Investment Information, available at: <http://www.hkex.com.hk/eng/global/faq/listed%20company.htm>, accessed October 23, 2012.

Table 6.5 Major Institutional Investors of PetroChina Company Limited 2005-2010

Year	Name of Institutional Investors	Origin of the Institutional Investors	Nature of Shares	Number of Shares Held	Percentage of Total Shareholding	Increase / Decrease of Shares
2005	Warren E. Buffett	Foreign	H Shares	2,347,761,000	1.311%	/
	J.P. Morgan Chase & Co.	Foreign	H Shares	1,698,459,199	0.948%	/
2006	J.P. Morgan Chase & Co.	Foreign	H Shares	2,595,035,030	1.449%	+896,575,831
	Warren E. Buffett	Foreign	H Shares	2,347,761,000	1.311%	/
	Templeton Asset Management Limited	Foreign	H Shares	1,054,208,903	0.589%	/
2007	HKSCC Nominees Limited*	Foreign	H Shares	20,937,754,152	11.44%	/
	UBS AG	Foreign	H Shares	1,503,922,021	0.83%	/
	China Life Insurance (Group) Company - Traditional - Ordinary Insurance Product	Domestic	A Shares	56,797,000	0.031%	/
	China Life Insurance Company Limited - Dividends - Personal Dividends - 005L - FH002 Shanghai	Domestic	A Shares	30,238,570	0.016%	/
	China Life Insurance Company Limited - Traditional - Ordinary Insurance Product - 005L - CT001 Shanghai	Domestic	A Shares	25,069,000	0.014%	/
	China Life Insurance Company Limited - Dividends - Group Dividends - 005L - FH001 Shanghai	Domestic	A Shares	25,069,000	0.014%	/
	Ping An Life Insurance Company of China, Ltd. - Traditional - Ordinary Insurance Products	Domestic	A Shares	25,069,000	0.014%	/
	New China Life Insurance Company Limited - Dividends - Group Dividends - 018L FH001 Shanghai	Domestic	A Shares	25,069,000	0.014%	/
	Ping An Life Insurance Company of China, Ltd. - Proprietary Funds	Domestic	A Shares	25,069,000	0.014%	/
	Ping An Life Insurance Company of China, Ltd. - Dividends - Personal Insurance Dividends	Domestic	A Shares	25,069,000	0.014%	/
2008	HKSCC Nominees Limited*	Foreign	H Shares	20,869,519,699	11.40%**	-68,234,453
	J.P. Morgan Chase & Co.	Foreign	H Shares	2,329,725,346	1.27%	/
	Bank of Communications - Yi Fang Da 50 Index Securities Investment Fund	Domestic	A Shares	53,233,434	0.029%	+53,233,434
	Industrial and Commercial Bank of China - Shanghai 50 Index ETF Securities Investment Fund	Domestic	A Shares	47,178,809	0.026%	+42,415,163
	Bank of China - Shanghai and Shenzhen 300 Index Jiashi Securities Investment Fund	Domestic	A Shares	24,846,098	0.014%	+10,810,672

	China Life Insurance Company Limited - Dividends - Personal Dividends - 005L - FH002 Shanghai	Domestic	A Shares	23,519,614	0.013%	-6,718,956
	China Construction Bank - CIFM China Advantage Securities Investment Fund	Domestic	A Shares	20,943,434	0.011%	+20,943,434
	China Life Insurance Company Limited - Traditional - Ordinary Insurance Product - 005L - CT001 Shanghai	Domestic	A Shares	18,771,597	0.010%	-6,297,403
	UBS AG	Foreign	A Shares	18,032,575	0.010%	+17,041,546
	China Life Insurance (Group) Company - Traditional - Ordinary Insurance Product	Domestic	A Shares	17,926,950	0.010%	-38,870,050
2009	HKSCC Nominees Limited*	Foreign	H Shares	20,819,411,829	11.38%**	-50,107,870
	National Council for Social Security Fund of the PRC (NSSF)	Domestic	A Shares	400,000,000	0.219%	+400,000,000
	China Life Insurance Company Limited - Dividends - Personal Dividends - 005L - FH002 Shanghai	Domestic	A Shares	69,494,300	0.038%	+45,974,686
	Industrial and Commercial Bank of China - China Universal SCI Index Fund	Domestic	A Shares	60,604,060	0.033%	+60,604,060
	China Construction Bank - Changsheng Tongqing Detachable Transaction Securities Investment Fund	Domestic	A Shares	46,078,103	0.025%	+46,078,103
	Guangxi Investment Group Limited	Domestic	A Shares	39,329,509	0.021%	+39,329,509
	Industrial and Commercial Bank of China - Shanghai 50 Index ETF Securities Investment Fund	Domestic	A Shares	37,755,932	0.021%	-9,422,877
	China Construction Bank - CIFM China Advantage Securities Investment Fund	Domestic	A Shares	27,924,148	0.015%	+6,980,714
	Bank of Communications - Yi Fang Da 50 Index Securities Investment Fund	Domestic	A Shares	25,115,047	0.014%	-28,118,387
2010	HKSCC Nominees Limited*	Foreign	H Shares	20,801,208,420	11.37%**	-18,203,409
	J.P. Morgan Chase & Co.	Foreign	H Shares	1,996,347,016	1.09%	/
	Aberdeen Asset Management Plc. and its associates (together the “Aberdeen Group”) on behalf of accounts managed by the Aberdeen Group	Foreign	H Shares	1,266,618,163	0.69%	/
	Templeton Asset Management Ltd.	Foreign	H Shares	1,061,205,077	0.58%	/
	NSSF	Domestic	A Shares	400,000,000	0.219%	/
	Industrial and Commercial Bank of China - China Universal SCI Index Fund	Domestic	A Shares	57,326,103	0.031%	-3,277,957
	China Life Insurance Company Limited - Dividends - Personal Dividends - 005L - FH002 Shanghai	Domestic	A Shares	55,047,859	0.030%	-14,446,441
	China Construction Bank - Changsheng Tongqing Detachable Transaction Securities Investment Fund	Domestic	A Shares	45,719,759	0.025%	-358,344
	Guangxi Investment Group Limited	Domestic	A Shares	39,560,045	0.022%	+230,536

	Industrial and Commercial Bank of China - Shanghai 50 Index ETF Securities Investment Fund	Domestic	A Shares	35,312,598	0.019%	-2,443,334
	China Merchants Securities - Client Account of Collateral Securities for Margin Trading	Domestic	A Shares	35,114,494	0.019%	+35,114,494
	Bank of Communications - Yi Fang Da 50 Index Securities Investment Fund	Domestic	A Shares	32,482,052	0.018%	+7,367,005

Source: Adapted from PetroChina Company Limited 2005-2010 Annual Reports⁵⁴³

* HKSCC Nominees Limited is a subsidiary of the Hong Kong Stock Exchange and its principal business is to act as nominee on behalf of shareholders.

** Some H shares were indirectly held by CNPC through Fairy King Investments Limited, an overseas wholly-owned subsidiary of CNPC; these H shares were held in the name of HKSCC Nominees Limited.

⁵⁴³ See PetroChina, *PetroChina Company Limited Annual Reports 2005-2010*, available at: http://www.petrochina.com.cn/Ptr/Investor_Relations/Periodic_Reports/Annual_Report/, accessed September 13, 2011.

Table 6.5 shows the major institutional investors of PetroChina between 2005 and 2010. Warren E. Buffett and J.P. Morgan Chase & Co. were the major institutional investors of PetroChina in 2005 and 2006, and they had an interest in about 1.4 per cent of the H shares of PetroChina. From 2007 to 2010, no institutional investors held more than 1.3 per cent of PetroChina's H shares.⁵⁴⁴ After the flotation of PetroChina on the Shanghai Stock Exchange (SSE) in 2007, some domestic life assurance companies, such as the subsidiaries of China Life Company and Ping An Company became the major institutional investors of PetroChina's A shares. However, the ownership percentage of these domestic institutional investors was not in excess of 0.2 per cent. It seems that institutional investors of PetroChina would not have substantial influence in PetroChina's management since their voting rights in the company were almost negligible. Presumably, they would not actively engage in the corporate governance of PetroChina.

⁵⁴⁴ This does not include HKSCC Nominees Limited; the role of HKSCC Nominees Limited has been explained in former footnote.

Table 6.6 Shareholders and Underlying Shares with Selling Restrictions of PetroChina Company Limited 2007-2010

Year	Name of Shareholders	Number of Shares with Selling Restrictions at the Beginning of the Year	Number of Shares with Selling Restrictions Expired in the Year	Change in Number of Shares with Selling Restrictions in the Year	Number of Shares with Selling Restrictions at the End of the Year	Reasons for Selling Restrictions	Expiry Date of Selling Restrictions
2007	China National Petroleum Corporation (CNPC)	157,922,077,818	0	/	157,922,077,818	(1)	November 5, 2010
	Shares placed off-line	0	0	+1,000,000,000	1,000,000,000	(2)	February 5, 2008
2008	CNPC	157,922,077,818	0	/	157,922,077,818	/	November 5, 2010
	Shares placed off-line	1,000,000,000	1,000,000,000	-1,000,000,000	0	/	February 5, 2008
2009	CNPC	157,922,077,818	0	-400,000,000	157,522,077,818	/	November 5, 2010
	National Council for Social Security Fund of the PRC (NSSF)	0	0	+400,000,000	400,000,000	(3)	November 5, 2013
2010	CNPC	157,522,077,818	157,522,077,818	-157,522,077,818	0	/	The selling restrictions expired and trading commenced on November 8, 2010
	NSSF	400,000,000	0	/	400,000,000	/	November 5, 2013

Source: Adapted from PetroChina Company Limited 2007-2010 Annual Reports⁵⁴⁵

⁵⁴⁵ See PetroChina, *PetroChina Company Limited Annual Reports 2007-2010*, Changes in Share Capital and Information on Shareholders section, available at: http://www.petrochina.com.cn/Ptr/Investor_Relations/Periodic_Reports/Annual_Report/, accessed September 17, 2011.

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- (1) In October 2007, PetroChina offered its RMB denominated ordinary shares (A shares) to the public for the first time. At that time, CNPC undertook that for a period of 36 months, commencing from the date of listing of the A shares of PetroChina on the Shanghai Stock Exchange, it would not transfer or entrust others with the management of the A shares which it held, or allow such shares to be repurchased by PetroChina. However, certain shares held by CNPC, which could be subsequently listed on overseas stock exchanges after obtaining necessary approvals in the PRC, were not subject to the restriction of the 36-month lock-up period.
- (2) In October 2007, PetroChina offered its RMB denominated ordinary shares (A shares) to the public for the first time. Shares that had been placed with target placees off-line were subject to a lock-up period of three months from the date of listing of the shares on the Shanghai Stock Exchange.
- (3) Pursuant to Clause 13 of the Implementing Measures for the Transfer of Some State-owned Shares from the Domestic Securities Market to the National Social Security Fund,⁵⁴⁶ CNPC transferred part of its holding of the state-owned shares in PetroChina to the NSSF. The NSSF extended the lock-up period by three years, in addition to assuming the original state-owned shareholders' statutory obligations and voluntary commitments on lock-up periods.

⁵⁴⁶ See People's Republic of China, *The Implementing Measures for the Transfer of Some State-owned Shares from the Domestic Securities Market to the National Social Security Fund* (2009 Order No. 94 of the Ministry of Finance of the People's Republic of China), jointly issued by Ministry of Finance, State-owned Assets Supervision and Administration Commission, China Securities Regulatory Commission and National Council for Social Security Fund of the People's Republic of China on, and effective as of June 19, 2009, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=7902>, accessed September 16, 2011.

According to Table 6.6, the CNPC held 157,922,077,818 A shares with selling restrictions in 2007, and these A shares were subject to a 36 month lock-up period which expired in November 2010. Furthermore, the CNPC placed 1,000,000,000 A shares with target off-line placees, but the lock-up period of these shares was only three months. In 2009, the CNPC transferred 400,000,000 A shares to the National Council for Social Security Fund of the PRC (NSSF), where the NSSF undertook that the lock-up period of these A shares would be extended by three years, meaning that their trading would commence in early November of 2013.

Mr H (Interviewee No.8), who had a long record of service in the petrochemical industry, said that split share structure reform actually would not substantially affect the ownership structure of PetroChina in the foreseeable future, since PetroChina had been considered as one of the most strategically important petrochemical enterprises by China's central government. Although the selling restrictions of these PetroChina's A shares held by the CNPC expired in late 2010, Mr H did not believe that the CNPC was intending to sell any of these shares. Besides, Mr H added that these business propositions associated with the ownership structure of PetroChina, such as selling or transferring the PetroChina's A shares held by the CNPC, were definitely subject to approval by the SASAC, since these business propositions might seriously undermine the Mainland government's control over PetroChina.

c) Board Composition and Supervisory Board Composition

The composition of the board in PetroChina could be termed as a representative sample of major Chinese State-owned resources companies, since all chairmen, vice-chairmen, executive directors and non-executive directors were appointed by the Chinese government in its capacity as dominant shareholder. In 2011, the board of directors of PetroChina consisted of fourteen members, and the term of their appointment was from May 2008 to May 2011. In addition, five of the fourteen members were independent directors. The board composition of PetroChina conformed to the regulations of Article 109 of China's Company Law, as the directors numbered between five and nineteen.

PetroChina had also established a Supervisory Committee, which had nine members. Two of these members were independent supervisors, while the other three supervisors were appointed by the employees' representatives. It should be noted that CHEN Ming, who was the chairman of the supervisory committee of PetroChina, used to hold several senior management positions in the CNPC. According to Article 118 of China's Company Law, the supervisory board of a joint-stock company should have at least three members, where the proportion of employee representatives ought to account for no less than one-third of the supervisory membership. The proportion of PetroChina's employee representatives on its supervisory board did not fail to achieve the required standard.

Mr H (Interviewee No.8) reported that the chairman of PetroChina was actually appointed by the Organization Department of the Communist Party of China Central Committee, as the main role of a chairman of a major Chinese state-owned resources company was to protect China's strategic state-owned assets. Significantly, the integrity of the chairman was the single most important factor when the Organization Department of the Communist Party tried to find the right candidate for the job, which meant that the chairman of this kind of Chinese strategically important company should have the implicit trust of the Communist Party. By contrast, the Chinese government would generally appoint a professor-level individual who had more than twenty years' experience in the petrochemical industry to be the CEO or vice chairman of large state-owned petrochemical companies such as PetroChina, since these professional people would have the skills to take the state-owned enterprises forward.

Seemingly, the Chinese government tended towards tradition rather than innovation when appointing the chairman of these strategically valuable enterprises, and the role played by Confucian values was thus irreplaceable in this regard. The appointment of chairmen and CEOs for these large Chinese companies reflected the Confucian ethics that China's political elite had adopted, which also highlights that the corporate governance of China's companies was largely reliant on relationships and paternalistic leadership.⁵⁴⁷

⁵⁴⁷ Miles, Lilian and Goo, S. H., "Corporate Governance in Asian Countries: Has Confucianism Anything to Offer?", *Business and Society Review*, Vol. 118, Issue 1, 2013, p. 27.

Mr H also indicated that there would generally be no minority representative on the board of large resources companies like PetroChina. Besides, the Communist Party had the leading role in shaping the composition of the supervisory board of PetroChina and other similar companies, where those supervisors appointed by the employees' representatives would not ultimately represent the employees' interests either.

d) Stakeholders and Corporate Governance

PetroChina Company did not mention whether the protection of stakeholders' interests was integrated into company policy in its annual reports. Mr L (Interviewee No.12), a senior manager of a large Chinese petrochemical SOE, reported that PetroChina and comparable Chinese SOEs generally treated employees as the most important stakeholders, and thus would provide desirable benefits packages to their employees. Furthermore, PetroChina would not really consider the interests of other stakeholders when making its corporate decisions. The logic behind this kind of corporate governance pattern is that PetroChina and similar Chinese SOEs thought that their success was crucial to the economic prosperity of China. With each member of China's society holding a stake in the future of the country, PetroChina's success would advantage almost everyone in China.

PetroChina Company stated in its annual reports that PetroChina was able to comply with the regulatory rules of the jurisdictions in which it was listed, and that the company had also tried to improve its internal control system. Additionally, PetroChina provided corporate governance reports in its annual reports,⁵⁴⁸ which stated that it had strictly adhered to its own corporate governance code. In the said corporate governance reports, PetroChina explained the operations of its board of directors and special board committees in more detail. These facts could reflect Proposition 4, as the overseas listing improved some aspects of PetroChina's corporate governance.

As asserted by Mr H (Interviewee No.8), PetroChina was still to a great extent a traditional Chinese SOE, and the policy of the Communist Party comprehensively determined the nature of corporate governance in PetroChina. With the Chinese government showing no indication of a willingness to give up its dominant shareholder status of PetroChina in the future, PetroChina's corporate governance will continue to reflect insider control system patterns. This evidence can support both Propositions 2 and 3.

⁵⁴⁸ See PetroChina, *PetroChina Company Limited Annual Reports 2010*, Corporate Governance section, available at: http://www.petrochina.com.cn/Ptr/Investor_Relations/Periodic_Reports/Annual_Report/, accessed September 17, 2011.

III. THE CHINA NATIONAL OFFSHORE OIL CORPORATION LIMITED (CNOOC LIMITED)

a) Overview

The China National Offshore Oil Corporation (hereinafter referred to as “CNOOC Group”) was one of the three major National Oil Companies (NOC) in China, the other two being the CNPC (parent of PetroChina), and China Petrochemical Corporation (parent of Sinopec). The China National Offshore Oil Corporation Limited (hereinafter referred to as “CNOOC Limited”) was incorporated in Hong Kong on August 20, 1999 as an investment holding subsidiary of CNOOC Group, and it was listed on both the NYSE and HKEx in early 2001.⁵⁴⁹ In addition, CNOOC Limited was admitted as a constituent stock of the Hang Seng Index in July 2001.

While onshore upstream projects in China were largely engaged by PetroChina, CNOOC Group focused on the exploitation, exploration and development and sales of crude oil and natural gas, together with other petroleum products offshore.⁵⁵⁰ CNOOC Limited had four major production areas in offshore China: Bohai Bay, Western South China Sea, Eastern South China Sea and East China Sea.⁵⁵¹ Besides, CNOOC Limited has made continuing efforts in the exploitation of overseas

⁵⁴⁹ The stock symbol of CNOOC limited company on the NYSE is CEO, and on the HKEx is 0883; CNOOC Limited concluded its IPO on the NYSE in Feb 27, 2001, with its issue type as ADS.

⁵⁵⁰ See China National Offshore Oil Corporation (CNOOC Group), *Company Review*, available at: http://en.cnooc.com.cn/data/html/english/channel_110.html, accessed January 18, 2011.

⁵⁵¹ See China National Offshore Oil Corporation (CNOOC Group), *Company Profile*, available at: <http://www.cnooltd.com/encnooltd/aboutus/default.shtml>, accessed January 18, 2011.

resources in recent years, taking positive steps in mergers and acquisitions. In 2002, CNOOC Limited became the largest offshore oil producer in Indonesia after purchasing nine subsidiaries from the Spanish oil company, Repsol, which operated in five oil and gas fields.⁵⁵² In 2006, CNOOC Limited made another deal valued at US\$ 2.27 billion to buy a 45 per cent stake in a substantial offshore oil field from the South African Petroleum Company in Nigeria.⁵⁵³ A mere four years later, CNOOC Limited signed a further contract with Britain's BG Group to purchase upstream assets valued approximately US\$ 60 billion, by which CNOOC Limited would buy 3.6 million tonnes per annum (Mtpa) of liquified natural gas (LNG) from the British firm's Queensland project located on Australia's east coast.⁵⁵⁴

By 2010, CNOOC Limited owned net proved reserves of around 2.66 billion Barrel of Oil Equivalents (BOE), while its average daily net production was 623,896 BOE. Moreover, CNOOC Limited had over 4,000 employees, with its total asset worth approximately US\$ 36,805,370,000.⁵⁵⁵

⁵⁵² See McMillan, Alex Frew, "CNOOC Buys Indonesian Oil Fields", *CNN*, January 21, 2002, available at: <http://archives.cnn.com/2002/BUSINESS/asia/01/21/ind.cnooc/index.html>, accessed January 18, 2011.

⁵⁵³ See Goodman, Peter S., "CNOOC Buys Oil Interest In Nigeria", *The Washington Post*, January 10, 2006, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/09/AR2006010901779.html>, accessed January 19, 2011.

⁵⁵⁴ See The Sydney Morning Herald, "Australia's Biggest-ever Gas Deal Inked", *The Sydney Morning Herald*, March 24, 2010, available at: <http://www.smh.com.au/business/australias-biggestever-gas-deal-inked-20100324-qvd3.html>, accessed January 19, 2011.

⁵⁵⁵ See China National Offshore Oil Corporation (CNOOC Group), *Company Profile*, available at: <http://www.cnoocld.com/encnoocld/aboutus/default.shtml>, accessed January 19, 2011.

b) Corporate Structure and Ownership Structure

Table 6.7 Major Shareholders and Shareholdings of China National Offshore Oil Corporation (CNOOC) Limited 2000-2011

Year	Total Number of Outstanding Shares of CNOOC Limited	Number of Outstanding American Depositary Shares (ADS)	Percentage of All Outstanding Shares (Underlying Ownership of ADS)	Number of ADS Record Holders	Controlling Shareholders	Number of Shares Owned by Controlling Shareholder	Percentage of Total Shareholding (Shares held by Controlling Shareholders)
2000	8,214,165,655	23,979,943	5.8%	1505	CNOOC Group ⁽¹⁾	5,800,000,000	70.61% ⁽²⁾
2001	8,214,165,655	?*	?	?	CNOOC Group	5,800,000,000	70.61%
2002	8,214,165,655	?*	?	?	CNOOC Group	5,800,000,000	70.61%
2003	41,061,951,275 ⁽³⁾	11,385,465	9.44%	12	CNOOC Group	29,000,000,000	70.625% ⁽⁴⁾
2004	41,054,675,375	7,463,545	1.8%	17	CNOOC Group	29,000,000,000	70.64% ⁽⁵⁾
2005	41,054,675,375	8,661,634	2.0%	24	CNOOC Group	28,772,727,273	66.41% ⁽⁶⁾
2006	43,328,552,648	13,913,503	3.2%	22	CNOOC Group	28,772,727,273	66.41%
2007	44,302,616,976	11,651,950	2.61%	28	CNOOC Group	28,772,727,273	64.41% ⁽⁷⁾
2008	44,669,199,984	12,440,689	2.8%	29	CNOOC Group	28,772,727,273	64.41%
2009	44,669,199,984	10,781,476	2.4%	38	CNOOC Group	28,772,727,273	64.41%
2010	44,669,199,984	12,945,022	2.9%	42	CNOOC Group	28,772,727,273	64.41%
2011	44,646,305,984	13,346,202	3.0%	45	CNOOC Group**	28,772,727,273	64.45% ⁽⁸⁾

Source: Adapted from China National Offshore Oil Corporation (CNOOC) Limited 2000-2010 Annual Reports and CNOOC Limited Annual Reports On Form 20-F 2000-2011⁵⁵⁶

⁵⁵⁶ China National Offshore Oil Corporation (CNOOC) Limited, *CNOOC Limited Annual Reports 1999-2011*, available at: <http://www.cnooltd.com/encnooltd/tzgx/dqbd/nianbao/default.shtml>, accessed October 25, 2012; and China National Offshore Oil Corporation (CNOOC) Limited, *CNOOC Limited Annual Reports On Form 20-F 2000-2011*, available at: <http://www.cnooltd.com/encnooltd/tzgx/dqbd/f20f/default.shtml>, accessed October 25, 2012.

** CNOOC Limited did not disclose these figures in its annual reports and Forms 20-F*

*** There was no other shareholder who held more than 5% of CNOOC Limited's shares from 2000 to 2011*

(1) CNOOC Group indirectly owned the shares of CNOOC Limited through two wholly-owned offshore subsidiaries: Overseas Oil & Gas Corporation, Ltd. (Bermuda) and CNOOC (BVI) Limited (British Virgin Islands).

(2) Other shares were held by public shareholders, corporate investors and strategic investors.

(3) On March 17, 2004, the shareholders of CNOOC Limited approved a five-for-one stock split of CNOOC Limited's shares; the stock split was effected by dividing the shares of HK\$0.10 each into the shares of HK\$0.02 each. Then the number of shares owned by CNOOC Group changed from 5,800,000,000 to 29,000,000,000.

(4) In May 2004, CNOOC Limited repurchased a total of 8,877,000 shares on the open market based on the general mandate approved by the shareholders on May 29, 2003, and these repurchased shares were cancelled. Then, CNOOC Group's interest in CNOOC Limited increased from 70.61% to 70.625% due to the decrease of total issued and outstanding shares.

(5) In 2004, CNOOC Limited repurchased a total of 18,453,000 shares on the open market based on the general mandate approved by the shareholders on June 14, 2004, and these repurchased shares were cancelled. Then, CNOOC Group's interest in CNOOC Limited increased from 70.625% to 70.64% due to the decrease to total issued and outstanding shares.

(6) As of June 6, 2006, CNOOC Group's interest in CNOOC Limited was reduced from 70.64% to 66.41% as a result of placing 2,500,000,000 existing shares to independent investors and subscribing 2,272,727,273 new shares by CNOOC (BVI) Limited.

(7) CNOOC Group's share ownership decreased from 66.41% to 64.41% as of May 30, 2008 due to an increase in CNOOC Limited's total outstanding shares as a result of the conversion of bonds and the exercise of options.

(8) In 2011, CNOOC Limited repurchased some shares in the open market and these repurchased shares were cancelled. Then, CNOOC Group's interest in CNOOC Limited increased from 64.41% to 64.45% due to the decrease to total issued and outstanding shares.

As mentioned earlier, China National Offshore Oil Corporation (CNOOC) Limited is a major state-owned petrochemical enterprise. As illustrated in Table 6.7, CNOOC Group, which was also a state-owned company, was the dominant shareholder of CNOOC Limited. CNOOC Group held about 91.5% of CNOOC Limited's shares prior to CNOOC Limited's IPO; then CNOOC Group sold some shares after the IPO and kept a 70.61% holding in CNOOC Limited in 2000. From 2000 to 2004, CNOOC Group's interest in CNOOC Limited increased slightly since CNOOC repurchased some shares on the open market, and then cancelled these shares. From 2004 to 2011, CNOOC Group's existing percentage holding in CNOOC Limited had dipped from 70.6% to 64.4%, the major cause of which was that CNOOC Group had placed some existing shares to independent investors and subscribed some new shares to CNOOC (BVI) Limited. However, CNOOC Group still retained its position as controlling shareholder.

Table 6.7 clearly revealed that CNOOC Group was able to exercise all the rights of a controlling shareholder, including electing the directors of CNOOC Limited and approving the general mandate for repurchasing the shares of CNOOC Limited on the open market (and then cancelling these shares). Besides, CNOOC Group could also place the shares of CNOOC Limited to independent investors and strategic investors. Significantly, there was no other shareholder who held more than 5% shares of CNOOC Limited, apart from CNOOC Group.

It should also be noted that the underlying ownership of outstanding American Depositary Shares (ADS) actually accounted for only a small fraction of the total ownership of CNOOC Limited from 2000 to 2011. With the underlying ownership of ADS making up of about 5.8% of all outstanding shares after the IPO of CNOOC Limited in 2000, this figure rose to 9.4% in 2003.⁵⁵⁷ Nevertheless, this figure then dropped suddenly in the following years, and generally stayed below 3%. Another issue deserving attention is that the number of ADS record holders was 1,505 after the IPO of CNOOC Limited, but this number declined sharply to only several dozen within 2 years. It seems that only foreign strategic investors and foreign corporate investors would like to hold the shares of CNOOC Limited for a long term.

c) Board Composition and Supervisory Board Composition

CNOOC Limited provided detailed information about the composition of its board of directors and supervisory board in its annual reports and Forms 20-F. The board of CNOOC Limited had ten members by 2011, which included two executive directors, four non-executive directors and four independent non-executive directors. Furthermore, CNOOC Limited had also established three board sub-committees including an audit committee, remuneration committee and nomination committee. It should be noted that WANG Yilin, the chairman of CNOOC Limited's board, also served as the chairman of CNOOC Group. Technically, some of CNOOC Limited's

⁵⁵⁷ CNOOC Limited did not disclose the number of outstanding ADS and the ADS's underlying ownership of 2001 and 2002 in its annual reports, but there was presumably no great variation in these figures, since the total number of all CNOOC Limited's outstanding shares had not changed in such two years.

corporate governance practices did not follow the corporate governance standards applicable to U.S. domestic companies listed on the NYSE, and CNOOC Limited disclosed these significant differences in its Forms 20-F.⁵⁵⁸

The composition of CNOOC Limited's board revealed once again that the majority shareholder status enabled CNOOC Group to appoint almost all directors. Moreover, Mr M (Interviewee No.13), who served as a senior manager in a large Chinese petrochemical SOE, said in his written responses to the empirical questionnaire that he did not think these independent non-executive directors would play a substantial part in the corporate governance practice of a large Chinese petrochemical SOE such as CNOOC Limited, although such independent non-executive directors normally had a vast store of financial and legal knowledge, as well as greater experience of industry. In crude terms, the board of CNOOC Limited generally could take an important corporate decision without considering the views of the independent non-executive directors. Nevertheless, Mr M felt sure that the independent non-executive directors would definitely give objective opinions in the board meetings freely, since they would have to accept responsibility if they failed to do so, especially if there were any costly incorrect decisions.

As the chairman of CNOOC Group, which was the controlling shareholder of CNOOC Limited, simultaneously doubled as the chairman of CNOOC Limited, it

⁵⁵⁸ China National Offshore Oil Corporation (CNOOC) Limited, *CNOOC Limited Annual Reports On Form 20-F 2000-2011*, Item 6 Directors, Senior Management and Employees: C Board Practice, available at: <http://www.cnoccltd.com/encnooltd/tzgx/dqbd/f20f/default.shtml>, accessed October 28, 2012.

could be argued that the corporate structure of CNOOC Limited still followed the example of a traditional Chinese SOE. With CNOOC Group appointing almost all board members of CNOOC Limited, it is highly disputable whether the interests of minority shareholders and other stakeholders could be represented. CNOOC Limited's corporate governance patterns still reflected insider control system patterns, and this fact can prove Proposition 2.

Notwithstanding directors and senior managers being prohibited from sitting on the supervisory board by Article 118 of China's Company Law, large Chinese SOEs such as CNOOC Limited were entitled to designate senior officials from the company's internal Chinese Communist party committee as supervisors. Mr E (Interviewee No.5), who had represented numerous large Chinese companies, argued there was no reason to suppose that these senior officials of a company's internal Chinese Communist party committee played only a negligible role in the supervisory board. In addition, Mr E held that these senior party committee officials had a general responsibility for the monitoring of the supervisory board, and that all other supervisors were under their supervision. He believed that the existence of the internal party committee introduced an element of ambiguity into the board structure of Chinese companies, especially for those giant Chinese SOEs. As the political stability of strategically important Chinese SOEs was always of primary national importance, the senior officials of the internal party committee could use their own discretion to launch disciplinary inspections against almost any director or

supervisor as they saw appropriate. This practice could be deemed as a reflection of the typical Confucian-style business ethics that the Chinese government pursued, and also suggests that the board structure of China's companies was still largely grounded in the political hierarchy.

d) Related Party Transactions and Corporate Governance

The related party transactions of CNOOC Limited were disclosed in the annual reports and Forms 20-F. CNOOC Limited entered into a considerable number of continuing connected transactions with CNOOC Group and its subsidiaries, which generally involved provision of exploration and support services. Seemingly, these related party transactions were conducted on a commercial basis. The disclosure of these related party transactions at least could suggest that CNOOC Limited had observed the disclosure requirements set out in the listing rules of the NYSE. Overseas listing probably could not remedy all the inherent problems of corporate governance in Chinese SOEs, but it would improve some aspects of their corporate governance. This point has been stated in Proposition 4.

CHAPTER 7. MAINLAND CHINESE CORPORATIONS LISTED ON THE HONG KONG STOCK EXCHANGE (HKEX): THE CASE STUDIES

The Hong Kong Stock Exchange (HKEx) grew out of the Association of Stockbrokers, which was the first formal stock market of Hong Kong established in 1891. Another Hong Kong Stockbrokers' Association was incorporated in 1921. These two exchanges were consolidated for greater efficiency in 1947, and this consolidation formed the Hong Kong Stock Exchange. After the Second World War, Hong Kong gradually established other three stock exchanges: the Far East Exchange, Kam Ngan Stock Exchange and Kowloon Stock Exchange. These four stock exchanges were fused into the Stock Exchange of Hong Kong in 1980s, which was the only unified stock market in Hong Kong.

When the Hong Kong government raised several proposals to reform the stock and futures markets in late 1990s, the Stock Exchange of Hong Kong Limited (SEHK), Hong Kong Futures Exchange Limited (HKFE) and Hong Kong Securities Clearing Company Limited (HKSCC) contracted a merger in 1999, which created a new single holding company: the Hong Kong Exchanges and Clearing Limited (HKEx). Then, the HKEx listed itself on the SEHK in June 2000.⁵⁵⁹

With the HKEx an already leading and formidable stock market in the Asia-Pacific

⁵⁵⁹ See Hong Kong Stock Exchange (HKEx), About HKEx, Corporate Information: History of HKEx and its Markets, available at: <http://www.hkex.com.hk/eng/exchange/corpinfo/history/history.htm>, accessed October 31, 2012.

region, its rigorous market regulation, sound risk management system as well as its geographical proximity to Mainland China made the HKEx a very popular overseas listing venue for Chinese companies.

This chapter will try to study three representative Mainland companies listed on the HKEx. Hopefully, the case studies of this chapter will provide some corroborative evidence for the propositions stated in Chapter 1.

I. THE CHINA PETROLEUM & CHEMICAL CORPORATION LIMITED (SINOPEC LIMITED)

a) Overview

The China Petroleum & Chemical Corporation Limited (hereinafter referred to as “Sinopec Limited”) was a China-based energy and chemical joint stock company established on February 25, 2000. Sinopec Limited was also the majority-owned listing arm of China Petrochemical Corporation (hereinafter referred to as “Sinopec Group”), which was incorporated by China’s central government in 1998 based on the former China Petrochemical Corporation. As Sinopec Group was one of the major petroleum SOEs in China, Sinopec Limited rationally obtained its upstream oil asset base from its state-controlled parent company.

Sinopec Limited mainly engaged in oil and gas operations in China, and its business

covered exploitation of crude oil and natural gas, pipeline transportation of crude oil and crude oil refinement, together with petrochemical production. As of 2010, Sinopec Limited operated sixteen oil and gas production bureaus, and the Shengli oilfield bureau located in northern Shandong province accounted for around 60 per cent of total production in 2009.⁵⁶⁰ In 2009, Sinopec produced about 962 thousand barrels of oil equivalent (BOE) per day, of which around 85 per cent was crude oil. By the end of 2009, Sinopec's proved reserves of crude oil and natural gas were approximately 3,943 million BOE.⁵⁶¹ In 2010, Sinopec Limited ranked first again in the Top 500 Enterprises of China ranking.⁵⁶² In 2009, Sinopec was ranked 9th by the Fortune Global 500, when it was actually the first Chinese company that had featured in the top ten. In 2010, it improved its Fortune Global 500 ranking from 9th to 7th, with annual revenues of US\$ 187,518 million, and profits of US\$ 5,756 million.⁵⁶³

Sinopec Limited was listed on the main board of the HKEx as H shares on October 19, 2000, whilst also simultaneously floating in New York and London.⁵⁶⁴ In June

⁵⁶⁰ See China Petroleum & Chemical Corporation Limited (Sinopec Limited), *U.S. Securities and Exchange Commission (SEC) Filings FORM 20-F (Annual Report)*, April 30, 2010, Item 4: Information on the Company, available at: <http://secfilings.nyse.com/files.php?symbol=SNP&fg=24>, accessed January 30, 2011.

⁵⁶¹ See China Petroleum & Chemical Corporation Limited (Sinopec Limited), *U.S. Securities and Exchange Commission (SEC) Filings FORM 20-F (Annual Report)*, April 30, 2010, Item 4: Information on the Company, Section B Business Overview, available at: <http://secfilings.nyse.com/files.php?symbol=SNP&fg=24>, accessed January 30, 2011.

⁵⁶² See Xinhua News Agency, "Sinopec Leads 'Top 500 Enterprises of China'", *Economic Observer*, September 06, 2010, available at: <http://www.eeo.com.cn/ens/homepage/haedlinescanner/2010/09/06/180026.shtml>, accessed January 30, 2011.

⁵⁶³ See CNNMoney, *Fortune Global 500 Full List*, available at: http://money.cnn.com/magazines/fortune/global500/2010/full_list/, accessed January 30, 2011.

⁵⁶⁴ The stock symbol of Sinopec Limited on the HKEx is 0386, and on the NYSE and London Stock Exchange (LSE) is SNP.

2001, Sinopec completed its listing on the Shanghai Stock Exchange (SSE).⁵⁶⁵ Sinopec's total number of shares was 86.7 billion by the end of 2009, of which 75.84 per cent were held by Sinopec Group, 19.35 per cent of shares were listed overseas and 4.81 per cent were domestic public shares.⁵⁶⁶

b) Corporate Structure and Ownership Structure

⁵⁶⁵ The stock symbol of Sinopec Limited on the SSE is 600028.

⁵⁶⁶ See China Petroleum & Chemical Corporation Limited (Sinopec Limited), *Our Company* section, available at: http://english.sinopec.com/about_sinopec/our_company/20100328/8532.shtml, accessed January 30, 2011.

Table 7.1 The Share Capital of China Petroleum & Chemical Corporation Limited (Sinopec Limited) 2000-2011

Year	Nature of Shares		Prior to Changes	After changes	Percentage of share capital
2000	State-owned domestic shares		67,121,951,000	67,121,951,000	80%
	H shares		16,780,488,000	16,780,488,000	20%
	Total number		83,902,439,000	83,902,439,000	100%
2001	State-owned shares		67,121,951,000	67,121,951,000	77.4%
	A shares ⁽¹⁾		2,800,000,000	2,800,000,000	3.2%
	H shares		16,780,488,000	16,780,488,000	19.3%
	Total number		86,702,439,000	86,702,439,000	100%*
2002	Shares not listed	State-owned shares	47,742,561,000	47,742,561,000	55%
		A shares not in circulation ⁽²⁾	570,000,000	0	0%
		Others ⁽³⁾	19,379,390,000	19,379,390,000	22.3%
	Total number of shares not in circulation		67,691,951,000	67,121,951,000	77.4%
	Shares listed	A shares	2,230,000,000	2,800,000,000	3.2%
		H shares	16,780,488,000	16,780,488,000	19.3%
	Total number of outstanding shares		19,010,488,000	19,580,488,000	22.5%
	Total number of shares		86,702,439,000	86,702,439,000	100%
2003	Shares not listed	State-owned shares	47,742,561,000	47,742,561,000	55%
		Others	19,379,390,000	19,379,390,000	22.3%
	Total number of shares not in circulation		67,121,951,000	67,121,951,000	77.4%
	Shares listed	A shares	2,800,000,000	2,800,000,000	3.2%
		H shares	16,780,488,000	16,780,488,000	19.3%
	Total number of outstanding shares		19,580,488,000	19,580,488,000	22.5%
	Total number of shares		86,702,439,000	86,702,439,000	100%

2004	Shares not listed	State-owned shares	47,742,561,000	58,885,561,000	67.9%
		Others	19,379,390,000	8,236,390,000	9.4%
	Total number of shares not in circulation		67,121,951,000	67,121,950,000	77.4%
	Shares listed	A shares	2,800,000,000	2,800,000,000	3.2%
		H shares	16,780,488,000	16,780,488,000	19.3%
	Total number of outstanding shares		19,580,488,000	19,580,488,000	22.5%
	Total number of shares		86,702,439,000	86,702,439,000	100%
2005	Shares not listed	State-owned shares	58,885,561,000	61,757,325,000	71.2%
		Others	8,236,390,000	5,364,626,000	6.2%
	Total number of shares not in circulation		67,121,951,000	67,121,951,000	77.4%
	Shares listed	A shares	2,800,000,000	2,800,000,000	3.2%
		H shares	16,780,488,000	16,780,488,000	19.3%
	Total number of outstanding shares		19,580,488,000	19,580,488,000	22.5%
	Total number of shares		86,702,439,000	86,702,439,000	100%
2006	Shares not listed	State-owned shares	66,535,191,000	65,758,044,000	75.84%
		Legal person shares	586,760,000	579,907,000	0.67%
	Total number of shares not in circulation		67,121,951,000	66,337,951,000	76.51%
	Shares listed	A shares	2,800,000,000	3,584,000,000 ⁽⁴⁾	4.13%
		H shares	16,780,488,000	16,780,488,000	19.35%
	Total number of outstanding shares		19,580,488,000	20,364,488,000	23.49%
	Total number of shares		86,702,439,000	86,702,439,000	100%
2007	Shares not listed	State-owned shares	66,758,044,000	61,422,922,000	70.84%
		Legal person shares	579,907,000	0	0%
	Total number of shares not in circulation		66,337,951,000	61,422,922,000	70.84%

	Shares listed	A shares	3,584,000,000	8,499,029,000	9.8%
		H shares	16,780,488,000	16,780,488,000	19.35%
	Total number of outstanding shares		20,346,488,000	25,279,517,000	29.15%
	Total number of shares		86,702,439,000	86,702,439,000	100%
2008	Shares not listed	State-owned shares	61,422,922,000	57,087,800,000	65.84%
	Total number of shares not in circulation		61,422,922,000	57,087,800,000	65.84%
	Shares listed	A shares	8,499,029,000	12,834,151,000	14.8%
		H shares	16,780,488,000	16,780,488,000	19.35%
	Total number of outstanding shares		25,279,517,000	29,614,639,000	34.16%
	Total number of shares		86,702,439,000	86,702,439,000	100%
2009	Shares not listed	State-owned shares	57,087,800,000	0	0%
	Total number of shares not in circulation		57,087,800,000	0	0%
	Shares listed	A shares	12,834,151,000	69,921,951,000	80.65%
		H shares	16,780,488,000	16,780,488,000	19.35%
	Total number of outstanding shares		29,614,639,000	86,702,439,000	100%
	Total number of shares		86,702,439,000	86,702,439,000	100%
2010	Shares listed	A shares	69,921,951,000	69,922,040,000	80.65%
		H shares	16,780,488,000	16,780,488,000	19.35%
	Total number of shares		86,702,439,000	86,702,528,000⁽⁵⁾	100%
2011	Shares listed	A shares	69,922,040,000	69,922,074,000	80.65%
		H shares	16,780,488,000	16,780,488,000	19.35%
	Total number of shares		86,702,528,000	86,702,562,000	100%

Source: Adapted from China Petroleum & Chemical Corporation Limited (Sinopec Limited) 2000-2011 Annual Reports⁵⁶⁷

⁵⁶⁷ China Petroleum & Chemical Corporation Limited (Sinopec Limited), *Sinopec Limited Annual Reports 2000-2011*, available at: http://english.sinopec.com/investor_center/reports/, accessed October 30,

** Percentage of individual items may not add up to total figure due to rounding*

(1) Sinopec Limited issued 2.8 million A shares in the PRC market on July 16, 2001 with an issue price of RMB 4.22.

(2) 0.57 billion A shares listed on Shanghai Stock Exchange (SSE) April 8, 2002 were held by strategic investors with a lock-up period of eight months.

(3) “Others” under the “Shares not listed” refers to the balance of shares which were transferred from China Petrochemical Corporation (Sinopec Group) to domestic asset management corporations in 2000.

(4) Sinopec Limited implemented A-share reform on non-tradable shares in October 2006.

(5) Sinopec Limited’s A shares increased by 88,774 between February 25, 2010 and March 3, 2010 as a result of partial exercise of the warrants embedded in its RMB 30 billion Bond with Warrants.

As illustrated in Table 7.1, state-owned shares accounted for 80% of Sinopec Limited's all share in 2000, while the remaining 20% were H shares. Sinopec Limited issued 2.8 million A shares in the PRC market in July 2001, which accounted for 3.2% of its all shares. The lock-up period of these A shares held by strategic investors was only eight months, thus all A shares were in circulation after 2003. The percentage of Sinopec Limited's non-circulating shares, which included state-owned shares and shares held by domestic asset management companies had been consistently maintained at 77.4% from 2001 to 2005. This figure declined progressively after 2006, and dropped to 65.84% in 2008. Sinopec Limited accomplished the Spilt Share Structure Reform in 2009, when all its shares had been converted into outstanding shares. By 2011, Sinopec Limited issued 86,702,528,000 shares in total, of which 80.65% were A shares and the remaining 19.35% H shares.

It seems that the Spilt Share Structure Reform had produced a certain effect, since there were no non-circulating shares for Sinopec Limited, such as state-owned shares or legal person shares any longer. But some interviewees suggested that this was little more than a formality, as Sinopec Limited would not sell off its shares unless it had obtained such instructions from higher authorities.

Table 7.2 The Shareholdings of Principal Shareholders of China Petroleum & Chemical Corporation Limited (Sinopec Limited) 2000-2011

Year	Name of Shareholders	Number of Shares Held	Nature of Shares Held	Type of Shares Held	Total Shareholdings
2000	China Petrochemical Corporation (Sinopec Group)	47,742,610,000	State-owned shares	Non-tradable	56.9%
	HKSCC (Nominees) Limited	8,812,830,000	H shares	Tradable	10.50%
	China Development Bank	8,775,570,000	State-owned shares	Non-tradable	10.46%
	China Cinda Asset Management Corporation	8,720,650,00	State-owned shares	Non-tradable	10.39%
2001	Sinopec Group	47,743,000,000	State-owned shares	Non-tradable	55.06%
	China Development Bank	8,776,000,000	State-owned shares	Non-tradable	10.12%
	China Cinda Asset Management Corporation	8,721,000,000	State-owned shares	Non-tradable	10.05%
2002	Sinopec Group	47,742,561,000	State-owned shares	Non-tradable	55.06%
	HKSCC (Nominees) Limited	8,948,143,000	H shares	Tradable	10.32%
	China Development Bank	8,775,570,000	State-owned shares	Non-tradable	10.12%
	China Cinda Asset Management Corporation	8,720,650,000	State-owned shares	Non-tradable	10.06%
	ExxonMobil Far East Holdings Ltd.	3,168,529,000	H shares	Tradable	3.65%
	Shell Eastern (PTE) Ltd.	1,966,422,000	H shares	Tradable	2.27%
	BP Oil Espana S.A.	1,829,229,000	H shares	Tradable	2.11%
	China Orient Asset Management Corporation	1,296,410,000	State-owned shares	Non-tradable	1.50%
	Guo Tai Jun An Corporation	586,760,000	State-owned shares	Non-tradable	0.68%
	TOPGOAL Company	339,065,000	H shares	Tradable	0.39%
2003	Sinopec Group	47,742,561,000	State-owned shares	Non-tradable	55.06%
	HKSCC (Nominees) Limited	11,639,618,000	H shares	Tradable	13.42%
	China Development Bank	8,775,570,000	State-owned shares	Non-tradable	10.12%
	China Cinda Asset Management Corporation	8,720,650,000	State-owned shares	Non-tradable	10.06%

	ExxonMobil Far East Holdings Ltd.	3,168,529,000	H shares	Tradable	3.65%
	BP Oil Espana S.A.	1,829,229,000	H shares	Tradable	2.11%
	China Orient Asset Management Corporation	1,296,410,000	State-owned shares	Non-tradable	1.50%
	Guo Tai Jun An Corporation	597,188,000	State-owned shares and A shares ⁽¹⁾	Non-tradable / Tradable	0.69%
	Social Security Fund Portfolio 107	72,100,000	A shares	Tradable	0.08%
	Xinghe Securities Investment Fund	61,948,000	A shares	Tradable	0.07%
2004	Sinopec Group	58,885,561,000	State-owned shares	Non-tradable	67.92%
	HKSCC (Nominees) Limited	16,678,790,000	H shares	Tradable	19.24%
	China Cinda Asset Management Corporation	3,720,650,000	State-owned shares	Non-tradable	4.29%
	China Development Bank	2,632,570,000	State-owned shares	Non-tradable	3.04%
	China Orient Asset Management Corporation	1,296,410,000	State-owned shares	Non-tradable	1.50%
	Guo Tai Jun An Corporation	586,760,000	Legal person shares	Non-tradable	0.68%
	EFUND 50 Securities Investment Fund	73,109,000	A shares	Tradable	0.08%
	Xinghe Securities Investment Fund	64,387,000	A shares	Tradable	0.07%
	Qingdao Port Authority	60,000,000	A shares	Tradable	0.07%
	Harvest Service Sector Fund	59,749,000	A shares	Tradable	0.07%
2005	Sinopec Group	61,757,325,000	State-owned shares	Non-tradable	71.2%
	HKSCC (Nominees) Limited	16,679,304,000	H shares	Tradable	19.2%
	China Cinda Asset Management Corporation	2,848,886,000	State-owned shares	Non-tradable	3.3%
	China Orient Asset Management Corporation	1,296,410,000	State-owned shares	Non-tradable	1.5%
	China Development Bank	632,570,000	State-owned shares	Non-tradable	0.7%
	Guo Tai Jun An Corporation	605,041,000	Legal person shares and A shares ⁽²⁾	Non-tradable / Tradable	0.7%

	Fortis Haitong Growth Investment Fund	89,668,000	A shares	Tradable	0.1%
	EFUND 50 Securities Investment Fund	70,984,000	A shares	Tradable	0.1%
	Shanghai Securities 50ETF Investment Fund	67,016,000	A shares	Tradable	0.1%
	Qingdao Port (Group) Co Ltd.	60,000,000	A shares	Tradable	0.1%
2006	Sinopec Group	65,758,044,000	State-owned shares	Non-tradable	75.84%
	HKSCC (Nominees) Limited	16,685,675,000	H shares	Tradable	19.24%
	Guo Tai Jun An Corporation	579,964,000	Legal person shares and A shares	Non-tradable / Tradable	0.67%
	Southern Supreme Growth Stock Investment Fund	134,174,000	A shares	Tradable	0.15%
	China Life Insurance Company Limited - Dividend - Individual Dividend - 005L - FH002 Shanghai	127,369,000	A shares	Tradable	0.15%
	Guangfa Strategic Selected Mixed Equity Investment Fund	93,836,000	A shares	Tradable	0.11%
	EFUND Stable Growth Securities Investment Fund	89,796,000	A shares	Tradable	0.10%
	EFUND Value Selected Stock Securities Investment Fund	81,580,000	A shares	Tradable	0.09%
	China Life Insurance (Group) Company - Traditional - Ordinary Insurance Product	78,913,000	A shares	Tradable	0.09%
	Harvest Theme Selected Mixed Securities Investment Fund	68,676,000	A shares	Tradable	0.08%
2007	Sinopec Group	65,758,044,000	State-owned shares	Non-tradable	75.84%
	HKSCC (Nominees) Limited	16,699,595,000	H shares	Tradable	19.26%
	Guo Tai Jun An Securities Co. Ltd.	579,906,000	Legal person shares	Non-tradable	0.67%
	E Fund 50 Index Equity Investment Fund	130,790,000	A shares	Tradable	0.15%
	Shanghai Stock Exchange Tradable Open-end Index Securities Investment Fund	84,725,000	A shares	Tradable	0.10%
	Harvest Shanghai & Shenzhen 300 Index Securities Investment Fund	75,918,000	A shares	Tradable	0.09%

	Bosera Thematic Sector Equity Securities Investment Fund	70,229,000	A shares	Tradable	0.08%
	Bank of Communication Schroders Blue Chip Securities Investment Fund	50,257,000	A shares	Tradable	0.06%
	China Post Core Growth Securities Investment Fund	44,000,000	A shares	Tradable	0.05%
	China Life Insurance Company Limited - Dividend - Individual Dividend - 005L - FH002 Shanghai	37,000,000	A shares	Tradable	0.04%
2008	Sinopec Group	65,758,044,000	State-owned shares	Non-tradable	75.84%
	HKSCC (Nominees) Limited	16,687,682,000	H shares	Tradable	19.25%
	Guo Tai Jun An Securities Co. Ltd.	377,906,000	A shares	Tradable	0.44%
	Rongtong New Blue Chip Securities Investment Fund	76,462,000	A shares	Tradable	0.09%
	Bosera Thematic Sector Equity Securities Investment Fund	75,000,000	A shares	Tradable	0.09%
	Shanghai Stock Exchange Tradable Open-end Index Securities Investment Fund	58,346,000	A shares	Tradable	0.07%
	Everbright Baodexin Quantative Core Securities Investment Fund	51,056,000	A shares	Tradable	0.06%
	China Social Security Fund 102 Portfolio	50,617,000	A shares	Tradable	0.06%
	E Fund 50 Index Securities Investment Fund	50,334,000	A shares	Tradable	0.06%
	Shanghai Investment & Morgan China Premium Securities Investment Fund	49,827,000	A shares	Tradable	0.06%
2009	Sinopec Group	65,758,044,000	State-owned shares	Non-tradable	75.84%
	HKSCC (Nominees) Limited	16,675,277,000	H shares	Tradable	19.23%
	China Life Insurance Corporation - Dividend - Individual Dividend - 005L - FH002 Shanghai	2,567,820,000	A shares	Tradable	0.30%
	Guo Tai Jun An Securities Co. Ltd.	2,544,840,000	A shares	Tradable	0.29%
	Bosera Thematic Sector Securities Investment Fund	750,000,000	A shares	Tradable	0.09%

	Changsheng Tongqing Separately-traded Stock Fund	600,270,000	A shares	Tradable	0.07%
	Shanghai Investment & Morgan China Premium Securities Investment Fund	440,000,000	A shares	Tradable	0.05%
	Shanghai Stock Exchange Tradable Open-ended Index 50 Fund	395,540,000	A shares	Tradable	0.05%
	Fortune SGAM Selected Sectors Fund	360,900,000	A shares	Tradable	0.04%
	China AMC GARP Fund	354,610,000	A shares	Tradable	0.04%
2010	Sinopec Group	65,758,044,000	A shares	Tradable	75.84%
	HKSCC (Nominees) Limited	16,658,226,000	H shares	Tradable	19.21%
	Guo Tai Jun An Securities Co. Ltd.	256,081,000	A shares	Tradable	0.30%
	China Life Insurance Company Limited - Dividend - Individual Dividend - 005L - FH002 Shanghai	140,750,000	A shares	Tradable	0.16%
	Postfund Core Growth Equity Investment Fund	62,871,000	A shares	Tradable	0.07%
	Postfund Core Selected Equity Investment Fund	55,854,000	A shares	Tradable	0.06%
	Shanghai Stock Exchange Tradable Open-ended Index 50 Fund	38,625,000	A shares	Tradable	0.04%
	E-Fund 50 Index Equity Investment Fund	35,344,000	A shares	Tradable	0.04%
	Changsheng Tongqing Detachable Trading Equity Investment Fund	33,899,000	A shares	Tradable	0.04%
	PICC Life Insurance Company Limited - Dividend - Individual Dividend	32,747,000	A shares	Tradable	0.04%
2011	Sinopec Group	65,758,044,000	A shares	Tradable	75.84%
	HKSCC (Nominees) Limited	16,671,989,000	H shares	Tradable	19.23%
	Guo Tai Jun An Securities Co. Ltd.	256,751,000	A shares	Tradable	0.30%
	China Life Insurance Company Limited - Bonus - Personal Bonus - 005L - FH002 Shanghai	170,958,000	A shares	Tradable	0.20%
	PICC Life Insurance Company Limited - Bonus - Personal Insurance	143,124,000	A shares	Tradable	0.17%

	Bonus				
	Hua An Hongli Stock Securities Investment Fund	73,700,000	A shares	Tradable	0.09%
	Harvest Theme New Dynamic Equity Securities Investment Fund	42,040,000	A shares	Tradable	0.05%
	Shanghai Stock Exchange Traded Open-ended Index 50 Fund	41,943,000	A shares	Tradable	0.05%
	Social Security Fund 101 Portfolio	33,707,000	A shares	Tradable	0.04%
	Taikang Life Insurance Co. Ltd. - Bonus - Personal Bonus - 019L - FH002 Shanghai	30,500,000	A shares	Tradable	0.04%

Source: Adapted from China Petroleum & Chemical Corporation Limited (Sinopec Limited) 2000-2011 Annual Reports⁵⁶⁸

(1) These shares included 586.76 million State-owned shares and 10.428 million A shares.

(2) These shares included 586.76 million Legal Person shares and 18.281 million A shares.

⁵⁶⁸ China Petroleum & Chemical Corporation Limited (Sinopec Limited), *Sinopec Limited Annual Reports 2000-2011*, available at: http://english.sinopec.com/investor_center/reports/, accessed October 30, 2012.

Table 7.2 shows that China Petrochemical Corporation (Sinopec Group) held 47,742,610,000 state-owned shares of Sinopec Limited in 2000, which accounted for 56.9% of all Sinopec Limited's shares. Apart from HKSCC (Nominees) Limited, which kept 10.5% of Sinopec Limited's shares (H shares), China Development Bank and China Cinda Asset Management Corporation respectively held about 10% of Sinopec Limited's state-owned shares. In 2002 and 2003, several foreign investors, such as ExxonMobil and Shell, began to invest in the H shares of Sinopec Limited, but Sinopec Group still retained its controlling shareholder position since it still held over 55% of Sinopec Limited's shares. The percentage of shares held by Sinopec Group began to rise after 2004, climbing to 75.84% in 2006. Then, this figure remained unchanged between 2007 and 2011. Significantly, there was no shareholder holding 10% or more of Sinopec Limited's shares after 2004, except HKSCC (Nominees) Limited.

Sinopec Limited implemented A-share reform in late 2006, by which the shareholders of non-tradable shares paid a total of 784,000,000 shares to the shareholders of tradable A shares as compensation.⁵⁶⁹ Besides, the former non-tradable shares were divided into three parts, and the lock-up periods of these three parts expired in 2007, 2008 and 2009, respectively.

Technically, no other shareholder held more than 0.30% of the issued shares of

⁵⁶⁹ China Petroleum & Chemical Corporation Limited (Sinopec Limited), *Sinopec Limited Annual Reports 2006*, p. 38, available at: http://english.sinopec.com/investor_center/reports/, accessed October 31, 2012.

Sinopec Limited apart from Sinopec Group and HKSCC (Nominees) Limited in 2011. When Sinopec Group was an SOE, directly controlled by the SASAC, Sinopec Limited's ownership structure still followed the typical Chinese SOEs' model. It would be very difficult for other shareholders to challenge Sinopec Group's control over Sinopec Limited, since their shareholdings were totally insignificant.

c) Board Composition and Corporate Governance

Sinopec Limited's board of directors consisted of fifteen male members in 2011, which included a chairman, vice chairman, president, senior vice president, directors and independent non-executive directors. None of these members held shares of Sinopec Limited as of 2011, except the 10,000 A shares of Sinopec Limited held by vice president LING Yiqun.⁵⁷⁰ Besides, Sinopec Limited had established several special committees under the board, such as an audit committee and compensation committee. The supervisory board of Sinopec Limited had nine members, including two independent supervisors and four employee's representative supervisors. The composition of Sinopec Limited's board of directors and supervisory board fulfilled all the criteria stipulated by China's Company Law.

Apart from Sinopec Group and HKSCC (Nominees) Limited, no other shareholders held more than 0.3% of Sinopec Limited's shares in 2011. With HKSCC (Nominees)

⁵⁷⁰ China Petroleum & Chemical Corporation Limited (Sinopec Limited), *Sinopec Limited Annual Reports 2011*, p. 43, available at: http://english.sinopec.com/investor_center/reports/, accessed November 1, 2012.

Limited being a subsidiary of the HKEx group, all shares held in the HKEx's Central Clearing and Settlement System (CCASS) were registered in the name of HKSCC (Nominees) Limited. This indicated that Sinopec Group virtually could appoint almost all members of the board and supervisory board, as its shareholding was 75.84% in 2011.

Sinopec Limited argued in the annual reports that it continued to explore every avenue to improve its corporate governance. It was stated that Sinopec Limited had conducted self-inspection to prevent insider dealing. Moreover, it took various measures to improve the internal control system, as well as enhancing information disclosure. Most importantly, Sinopec Limited had complied with the Code on Corporate Governance Practices set out in Appendix 14 to the Hong Kong Listing Rules. Superficially, Sinopec Limited provided detailed corporate governance reports in its annual reports.

Mr E (Interviewee No.5), a British partner lawyer of an international law firm, had considerable experience in the corporate and financing field in Mainland China. Mr E had advised broad range of Mainland clients, including some large Chinese SOEs, on law matters in relation to energy and resource transactions. He thought that the listing on a prominent foreign stock exchange such as the HKEx might improve some aspects of the Mainland companies' corporate governance, as the listing rules of the HKEx set out stringent mandatory standards for Mainland companies,

including strict principles on the remuneration of top executives and the requirement to comply with the Code on Corporate Governance Practices of HKEx, as well as the higher requirements of transparency in information disclosure.

However, Mr E did not anticipate that the overseas listing would completely transform the corporate governance of Chinese companies, especially for those giant Chinese SOEs. He argued that the Chinese government always adopted top-down management structures for large Mainland resource companies such as Sinopec Limited, which meant that the government slanted towards directly appointing most senior executives of these companies. Moreover, Mr E suggested that the Communist Party's Committee in Chinese SOEs could play a more vital role than the board of directors in some cases, and that the board should refer important strategic issues to the Communist Party's Committee. Mr E's arguments could lend weight to Propositions 4 and 5, as traditional Chinese corporate governance ideas will be very likely to remain strong in foreign listed Mainland companies, while some aspects of their corporate governance will be improved.

As has been analysed in earlier chapters, agency theory argued that the board chair and CEO positions should be divided so as to reinforce the independence of the board, as the objective evaluation of the CEO's work was one of the major responsibilities of the board.⁵⁷¹ Basically, the governance practice of CEO duality

⁵⁷¹ Peng, Mike W.; Zhang, Shujun and Li, Xinchun, "CEO Duality and Firm Performance during China's Institutional Transitions", *Management and Organization Review*, Vol. 3, Issue 2, 2007, p. 207.

has been steadily abolished in large Chinese companies. However, Mr K (Interviewee No.11) argued whether partitioning the positions of board chair and CEO would materially affect the corporate governance of China's large SOEs. The fact of the matter was that the board chairs of these large Chinese SOEs were all politically appointed by China's authorities, and thus they naturally had political superiority over the CEOs. In essence, the board chair served as the deputy of the State within the company.

II. THE PING AN INSURANCE (GROUP) COMPANY OF CHINA LIMITED (PING AN)

a) Overview

The Ping An Insurance (Group) Company of China Limited (hereinafter referred to as "Ping An") was established in 1988 in Shenzhen. As Ping An was the first insurance company that adopted a shareholding structure in China, it together with its subsidiaries mainly engaged in insurance services, banking and investment businesses. Ping An was listed on the main board of the HKEx as H shares on June 24, 2004 (under the stock code of 2318), and was soon selected as an index stock of the Hang Seng China Enterprises Index (HSCEI), replacing Anhui Expressway.⁵⁷² In mid-2007, Ping An was selected as a Hang Seng Index Constituent Stock by the Hang Seng Index Services Company.⁵⁷³ On March 1, 2007, Ping An floated on the

⁵⁷² See Ping An Insurance (Group) Company of China Limited (Ping An), *Ping An News*, "Ping An is Included in the Hang Seng China Enterprises Index (HSCEI)", August 16, 2004, available at: <http://about.pingan.com/pinganxinwen/46585.shtml>, accessed January 31, 2011.

⁵⁷³ See Ping An Insurance (Group) Company of China Limited (Ping An), *Ping An News*, "Ping An Insurance

Shanghai Stock Exchange (SSE) under the stock code of 601318.⁵⁷⁴

Initially, Ping An company focused on casualty insurance business only; however, in the mid-1990s it adopted a diversifying strategy and gradually transformed into an integrated financial services conglomerate engaged in asset management, banking, investment and marketing service businesses. Recently, Ping An company has provided services for more than 51 million retail customers and two million corporate clients through its numerous subsidiaries.⁵⁷⁵ By the end of 2009, the rapidly growing marketing network of Ping An was comprised of 417,000 life insurance sales agents, over 83,000 full-time employees, and more than 3,800 branch offices.⁵⁷⁶ Ping An Group's major insurance arm, Ping An Life Insurance Company of China, Ltd., was the second largest life insurer in China by insurance income, while Ping An Property & Casualty Insurance Company of China, Ltd. was the second largest property and casualty insurer in China.⁵⁷⁷ From 2008 to 2010, Ping An group secured first position among China's Non-State-Owned Enterprises in the Global 500 list of Fortune Magazine.⁵⁷⁸ In 2009, Ping An group ranked second

Becomes Constituent Stock of Hang Seng Index", May 11, 2007, available at: <http://about.pingan.com/pinganxinwen/46558.shtml>, accessed January 31, 2011.

⁵⁷⁴ See Ping An of China Securities (Hong Kong) Company Limited, *Company Description*, available at: <http://stock.pingan.com.hk/CompanyDescription.aspx?Language=Eng>, accessed January 31, 2011.

⁵⁷⁵ The major subsidiaries of Ping An (Group) Company are Ping An Life Insurance Company of China, Ltd.; Ping An Property & Casualty Insurance Company of China, Ltd.; Ping An Annuity Insurance Company of China, Ltd.; Ping An Health Insurance Company of China, Ltd.; Ping An Bank Co., Ltd.; China Ping An Trust & Investment Co., Ltd.; Ping An Securities Co., Ltd.; Ping An of China Securities (Hong Kong) Co., Ltd.; Ping An Asset Management Co., Ltd.; Ping An of China Asset Management (Hong Kong) Co., Ltd.; and Ping An Futures Co. Ltd.

⁵⁷⁶ See Ping An Insurance (Group) Company of China Limited (Ping An), Introduction section, available at: <http://about.pingan.com/en/index.shtml>, accessed January 31, 2011.

⁵⁷⁷ The leaders on these two markets are China Life Insurance Co. Ltd. and PICC Property and Casualty Co. Ltd.; see 21st Century Business Herald, "Ping An Aims to Become No.1 Life and Property Insurer in China", *21st Century Business Herald*, August 06, 2010, available at: <http://en.21cbh.com/HTML/2010-8-6/2318.HK-601318.SH.html>, accessed January 31, 2011.

⁵⁷⁸ See Ping An Insurance (Group) Company of China Limited (Ping An), *Ping An News*, "Ping An Insurance

among insurers in the world in the British Financial Times Global 500 enterprises list.

Ping An was the first Chinese insurer to have introduced foreign investors into its shareholding structure, as it had obtained investment from Morgan Stanley and Goldman Sachs as early as 1994. In 2002, HSBC Group took a large equity interest in Ping An through a wholly-owned subsidiary, and HSBC Group completed further acquisitions in 2005, bringing its aggregate holding in Ping An to 19.90 per cent.⁵⁷⁹

b) Corporate Structure and Ownership Structure

Included in Fortune's Global Top 500 List", July 12, 2010, available at: <http://about.pingan.com/pinganxinwen/60741.shtml#>, accessed January 31, 2011.

⁵⁷⁹ See HSBC Holdings Plc., *HSBC Newsroom*, August 31, 2005, available at: <http://www.hsbc.com/1/2/newsroom/news/2005/hsbc-completes-acquisition-of-9point91-per-cent-of-ping-an>, accessed January 31, 2011.

Table 7.3 The Share Capital of Ping An Insurance (Group) Company of China Limited 2004-2011

Year	Nature of Shares	Number of Shares	Percentage of Share Capital
2004	H shares	6,195,053,334	100%
2005	H shares	6,195,053,334	100%
2006	H shares	6,195,053,334	100%
2007	A shares	4,786,409,636 ⁽¹⁾	65.17%
	H shares	2,558,643,698	34.83%
	Total	7,345,053,334	100%
2008	A shares	4,786,409,636	65.17%
	H shares	2,558,643,698	34.83%
	Total	7,345,053,334	100%
2009	A shares	4,786,409,636	65.17%
	H shares	2,558,643,698	34.83%
	Total	7,345,053,334	100%
2010	A shares	4,786,409,636	62.62%
	H shares	2,857,732,456 ⁽²⁾	37.38%
	Total	7,644,142,092	100%
2011	A shares	4,786,409,636	60.46%
	H shares	3,129,732,456 ⁽³⁾	39.54%
	Total	7,916,142,092	100%

Source: Adapted from Ping An Insurance (Group) Company of China Limited 2004-2011 Annual Reports⁵⁸⁰

⁵⁸⁰ Ping An Insurance (Group) Company of China Limited, *Ping An Annual Reports 2004-2011*, available at: <http://ir.pingan.com/en/gongsibaogao/index.shtml>, accessed November 4, 2012.

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- (1) Ping An issued 1.15 billion ordinary A shares with par value of RMB 1.00 at the offer price of RMB 33.80 per A share in February 2007.
 - (2) Ping An issued additional 299,088,758 H shares on May 6, 2010.
 - (3) Ping An issued additional 272,000,000 H shares on June 17, 2011.

Ping An issued 1,261,720,000 ordinary H shares on June 24, 2004 through an Initial Public Offering (IPO) on the HKEx. In early 2007, Ping An further issued 1.15 billion ordinary A shares, and these A shares were listed on the SSE in March 2007. Table 7.3 shows that the proportion of Ping An's A shares to H shares was 65.17% to 34.83% in 2007, and this ratio remained unchanged in the following two years.

In 2010, Ping An entered a share purchase agreement with Newbridge Capital, and Ping An made non-public directed issuance of new H shares to Newbridge Capital. In 2011, the CSRC approved another agreement of Ping An to make non-public directed issuance of an additional 272,000,000 H shares to Jinjun Limited. After these two non-public issuances, Ping An's H shares accounted for 39.54% of the total share capital as of 2011.

Table 7.4 The Substantial Shareholders of Ping An Insurance (Group) Company of China Limited 2004-2011
(all the interests in issued shares of Ping An amounting to 5% or more of the shares in issue)

Year	Name of Substantial Shareholders	Capacity	Number of Shares	Percentage of Total Shares
2004	HSBC Insurance Holdings Limited ⁽¹⁾	Beneficial owner	618,886,334	9.99%
	HSBC Holdings PLC	Interest of controlled corporations	618,886,334	9.99%
	Shenzhen Investment Holdings Co., Ltd. ⁽²⁾	Beneficial owner	543,181,445	8.77%
	China Ping An Trust & Investment Co., Ltd. Labor Union	Interest of controlled corporations	479,117,788	7.73%
	Ping An Securities Company Ltd. Labor Union	Interest of controlled corporations	479,117,788	7.73%
	Shenzhen Jingao Industrial Development Co., Ltd.	Interest of controlled corporations / Beneficial owner	479,117,788	7.73%
	The Goldman Sachs Group, Inc.	Interest of controlled corporations	410,382,182	6.62%
	Ping An Insurance (Group) Company of China, Ltd. Labor Union	Interest of controlled corporations	389,592,366	6.29%
	Shenzhen New Horse Investment Development Co., Ltd.	Beneficial owner	389,592,366	6.29%
	Yuan Trust Investment Company Ltd.	Beneficial owner	380,000,000	6.13%
	Morgan Stanley	Interest of controlled corporations	360,817,888	5.83%
	Capital China Group Limited	Beneficial owner	332,526,844	5.37%
2005	GS Advisors, L.L.C	Interest of controlled corporations	310,901,538	5.02%
	HSBC Holdings PLC	Interest of controlled corporations	1,233,870,388	19.92%
	HSBC Insurance Holdings Limited	Beneficial owner	618,886,334	9.99%
	The Hong Kong and Shanghai Banking Corporation Limited ⁽³⁾	Beneficial owner	614,099,279	9.91%
	Shenzhen Investment Holdings Co., Ltd.	Beneficial owner	543,181,445	8.77%
	Shenzhen Jingao Industrial Development Co., Ltd.	Interest of controlled corporations / Beneficial owner	479,117,788	7.73%
	Ping An Securities Company, Ltd. Labor Union	Interest of controlled corporations	479,117,788	7.73%
	China Ping An Trust & Investment Co., Ltd. Labor Union	Interest of controlled corporations	479,117,788	7.73%

	Shenzhen New Horse Investment Development Co., Ltd.	Beneficial owner	389,592,366	6.29%
	Ping An Insurance (Group) Company of China, Ltd. Labor Union	Interest of controlled corporations	389,592,366	6.29%
	Yuan Trust Investment Company Ltd.	Beneficial owner	380,000,000	6.13%
	Capital China Group Company Limited	Beneficial owner	332,526,844	5.37%
2006	HSBC Holdings PLC	Interest of controlled corporations	1,233,870,388	19.92%
	HSBC Insurance Holdings Limited	Beneficial owner	618,886,334	9.99%
	The Hong Kong and Shanghai Banking Corporation Limited	Beneficial owner	614,099,279	9.91%
	Shenzhen Investment Holdings Co., Ltd.	Beneficial owner	543,181,445	8.77%
	Shenzhen Jingao Industrial Development Co., Ltd.	Interest of controlled corporations / Beneficial owner	479,117,788	7.73%
	Ping An Securities Company, Ltd. Labor Union	Interest of controlled corporations	479,117,788	7.73%
	China Ping An Trust & Investment Co., Ltd. Labor Union	Interest of controlled corporations	479,117,788	7.73%
	Shenzhen New Horse Investment Development Co., Ltd.	Beneficial owner	389,592,366	6.29%
	Ping An Insurance (Group) Company of China, Ltd. Labor Union	Interest of controlled corporations	389,592,366	6.29%
	Yuan Trust Investment Company Ltd.	Beneficial owner	380,000,000	6.13%
2007	HSBC Holdings PLC	Interest of controlled corporations	1,233,870,388	16.80%
	HSBC Insurance Holdings Limited	Beneficial owner	618,886,334	8.43%
	The Hong Kong and Shanghai Banking Corporation Limited	Beneficial owner	614,099,279	8.36%
	Shenzhen Investment Holdings Co., Ltd.	Beneficial owner	543,181,445	7.40%
	Shenzhen New Horse Investment Development Co., Ltd.	Beneficial owner	389,592,366	5.30%
	Ping An Insurance (Group) Company of China, Ltd. Labor Union	Interest of controlled corporations	389,592,366	5.30%
	Yuan Trust Investment Company Ltd.	Beneficial owner	380,000,000	5.17%
2008	HSBC Holdings PLC	Interest of controlled corporations	1,233,870,388	16.80%
	HSBC Insurance Holdings Limited	Beneficial owner	618,886,334	8.43%
	The Hong Kong and Shanghai Banking Corporation Limited	Beneficial owner	614,099,279	8.36%

	Shenzhen Investment Holdings Co., Ltd.	Beneficial owner	546,672,967	7.44%
	Shenzhen New Horse Investment Development Co., Ltd.	Beneficial owner	389,592,366	5.30%
	Ping An Insurance (Group) Company of China, Ltd. Labor Union	Interest of controlled corporations	389,592,366	5.30%
	Yuan Trust Investment Company Ltd.	Beneficial owner	380,000,000	5.17%
2009	HSBC Holdings PLC	Interest of controlled corporations	1,233,870,388	16.80%
	HSBC Insurance Holdings Limited	Beneficial owner	618,886,334	8.43%
	The Hong Kong and Shanghai Banking Corporation Limited	Beneficial owner	614,099,279	8.36%
	Shenzhen Investment Holdings Co., Ltd.	Beneficial owner	481,359,551	6.55%
	Shenzhen New Horse Investment Development Co., Ltd.	Beneficial owner	389,592,366	5.30%
	Ping An Insurance (Group) Company of China, Ltd. Labor Union	Interest of controlled corporations	389,592,366	5.30%
	Yuan Trust Investment Company Ltd.	Beneficial owner	380,000,000	5.17%
2010	HSBC Holdings PLC	Interest of controlled corporations	1,240,069,099	16.22%
	HSBC Insurance Holdings Limited	Beneficial owner	618,886,334	8.10%
	The Hong Kong and Shanghai Banking Corporation Limited	Beneficial owner	613,929,279	8.03%
	Shenzhen Investment Holdings Co., Ltd.	Beneficial owner	481,359,551	6.30%
2011	HSBC Holdings PLC	Interest of controlled corporations	1,233,926,425	15.59%
	HSBC Insurance Holdings Limited	Beneficial owner	618,886,334	7.82%
	The Hong Kong and Shanghai Banking Corporation Limited	Beneficial owner	613,929,279	7.76%
	Shenzhen Investment Holdings Co., Ltd.	Beneficial owner	481,359,551	6.08%

Source: Adapted from Ping An Insurance (Group) Company of China Limited 2004-2011 Annual Reports⁵⁸¹

(1) HSBC Insurance Holdings Limited is a wholly-owned subsidiary of HSBC Holdings PLC.

(2) Shenzhen Investment Holdings Co., Ltd. is a state-owned company directly controlled by Shenzhen State-owned Asset Supervision and Administration Bureau.

(3) The Hong Kong and Shanghai Banking Corporation Limited is a wholly-owned subsidiary of HSBC Holdings PLC.

⁵⁸¹ Ping An Insurance (Group) Company of China Limited, *Ping An Annual Reports 2004-2011*, available at: <http://ir.pingan.com/en/gongsibaogao/index.shtml>, accessed November 4, 2012.

According to Table 7.4, the shareholding structure of Ping An was relatively scattered when compared with that of large Chinese SOEs, and there was no controlling shareholder. The largest shareholder of Ping An was HSBC Holdings PLC, which was a foreign company established in 1866. HSBC Holdings PLC indirectly held 1,233,926,425 H shares of Ping An through two wholly-owned subsidiaries, HSBC Insurance Holdings Limited and The Hong Kong and Shanghai Banking Corporation Limited. Besides, the third largest shareholder of Ping An was Shenzhen Investment Holdings Co., Ltd., which was a Chinese SOE controlled by Shenzhen State-owned Asset Supervision and Administration Bureau. Apart from these two major shareholders, some other domestic and foreign investment companies such as Goldman Sachs and Morgan Stanley had intermittently invested in Ping An, but they had only held a small percentage of shares in Ping An. Technically, the shareholding of these investment companies accounted for less than 5% of Ping An's total shareholding after 2010.

Superficially, Table 7.4 displayed that Ping An had a dispersed ownership structure, which was quite similar to the western outsider-based model. However, it might be not easy to arrive at the truth from these official statistics. It was generally believed that the next of kin of some of China's paramount political leaders played a vital role in forwarding the overseas listing of Ping An.⁵⁸² Ping An was initially a small casualty insurance company, and MA Mingzhe, a former official of Shenzhen

⁵⁸² This scandal first appeared in the 21st Century Economic Report in 2004, a newspaper based in Guangdong province of China.

government, successfully transformed it into a giant state-owned financial services company in the mid-1990s. It was unthinkable that MA could accomplish such a difficult plan without the powerful backing of the state bureaucracy, as Ping An was facing stiff competition in its infancy. Significantly, it was theoretically impossible for Ping An to file an overseas listing application under the rules of the SASAC and CSRC at that time, since the shareholding of foreign investors accounted for more than 50% of Ping An's share capital in early 2004 (before Ping An was listed on the HKEx). The U.S.-based New York Times recently published an investigation on the wealth of a senior Chinese government figure's family, by which it was alleged that the elderly mother of this Chinese chief magistrate held a stake valued at US\$ 120 million in Ping An as of 2007.⁵⁸³ Although there was only fragmentary firm evidence to support the case that political determinants played a leading role in the overseas listing of Ping An, the political influence of the Chinese government over Ping An's operation was not to be taken lightly.

c) Board Composition and Corporate Governance

The board of Ping An had four executive directors, seven non-executive directors and seven independent non-executive directors. Ping An had also established four board sub-committees: the Strategy and Investment Committee, Audit and Risk

⁵⁸³ See Barboza, David, "Billions in Hidden Riches for Family of Chinese Leader", *The New York Times*, October 25, 2012, available at: <http://www.nytimes.com/2012/10/26/business/global/family-of-wen-jiabao-holds-a-hidden-fortune-in-china.html>, accessed November 9, 2012.

Management Committee, Remuneration Committee and Nomination Committee. Besides, Ping An also had a supervisory board, which consisted of a chairman, two independent supervisors and three supervisors representing the employees. It should be noted that the chairman of the supervisory board was an independent supervisor. The biographies of Ping An's board members and supervisory board members were available in its latest annual report.

Ping An advised that all its independent non-executive directors met the independence guidelines set by the HKEx,⁵⁸⁴ and that no independent non-executive directors had any interest in the business of Ping An or its subsidiaries. Moreover, Ping An refused to allow the independent non-executive directors to take any administrative positions in the company.

While there was no dominant shareholder in Ping An, it was far from clear which kind of role the Party and the government played in electing the board members and supervisory board members of Ping An. However, the biographies showed that some key board members had worked in public office. MA Mingzhe, who was the chairman of Ping An's board, had spent much of his career in the Shenzhen Municipal Government. Additionally, he was a member of the 11th National Committee of the Chinese People's Political Consultative Conference. SUN Jianyi, the Executive Vice President of Ping An, was a former senior official of the People's

⁵⁸⁴ Hong Kong Stock Exchange, *Main Board Listing Rules*, Chapter 3: Authorized Representative and Directors, Section 3.13, available at: www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_3.pdf, accessed October 11, 2012.

Bank of China. Furthermore, FAN Mingchun, a non-executive director of Ping An, was actually the secretary of the Party Committee of Shenzhen Investment Holdings Co., Ltd., which was an SOE controlled by the Shenzhen Municipal Government (also the second largest shareholder of Ping An). GUO Limin, who served as the Chief of Economics and Information Committee of the Shenzhen Municipal Government, doubled as the non-executive director of Ping An. It should be noted that GUO was also the former chief of the State-owned Assets Supervision and Administration Commission of Shenzhen Municipality. Furthermore, other three independent non-executive directors had also worked for the Chinese government. Apart from these board members who had governmental background, HSBC Holdings PLC had appointed some members of the board.

The supervisory board of Ping An had six members, and three of these were independent. Among those members of the supervisory board, two members used to hold senior positions in public office. Three other supervisors were named employee representatives, but all these three supervisors representing the employees were holding senior management positions or Party secretary positions in Ping An or Ping An's subsidiaries. It seems that the composition of Ping An's supervisory board was still quite similar to that of traditional Chinese SOEs, and whether the employees' interests could be represented in the supervisory board is open to question.

As has been mentioned in earlier chapters, the two-tier board system had been

widely adopted in continental countries, where the management board and supervisory board attended to their own duties respectively. When the supervisory board was expected to assume the responsibilities for promoting stakeholders' interests, it held *de jure* and *de facto* supervisory power to monitor the management board, as well as for recruiting and dismissing the chairman, CEO and other executives. The two-tier board system had been adopted by Chinese companies such as Ping An, but the supervisory board in Chinese companies did not have the actual discretion to select directors or formulate compensation schemes. On the contrary, the chairman and CEO often had a strong voice in the nomination or even appointment of supervisors and independent directors in Chinese companies. Mr K (Interviewee No.11) held that the supervisory board played only a nominal role in most Chinese companies, and that Ping An was no exception.

Ping An had established its corporate governance structure in accordance with the PRC Company Law and the Code on Corporate Governance Practices of the Hong Kong Stock Exchange. Besides, Ping An adopted an internal control system that met international standards, and this internal control system could help to prevent systemic risk for Ping An. Ping An also paid special attention to investor relations, and global teleconferences and mobile conferences were organised regularly so as to maintain frequent communication with investors. In 2011, Ping An was granted the "2011 Board of Directors Award" by the Shanghai Stock Exchange and the "Award for Corporate Governance Excellence of 2011 Hong Kong Corporate Governance

Excellence Awards (Main Board-Hang Seng Index Constituents)”, co-organised by the Chamber of Hong Kong Listed Companies and the Centre for Corporate Governance & Financial Policy of Hong Kong Baptist University.⁵⁸⁵ These awards reflected that the corporate governance of Ping An stood up to international standards, and had been gaining credence among foreign investors.

It is safe to assume that Ping An has established an appropriate corporate governance structure, while the stringent listing rules and stricter scrutiny of the HKEx has further improved its governance practices. As mentioned earlier, it is doubtful whether the Chinese government tried to exercise an undue influence upon the election of Ping An’s board members and supervisors, although the state-owned Shenzhen Investment Holdings Co., Ltd. controlled by the Shenzhen municipal government held only 6% of the shares in Ping An as of 2011. Nevertheless, their biographies revealed that a considerable number of the key board members in Ping An had close ties with the Chinese government, while some members were even still holding high public office. Although the influence of the Chinese government over Ping An’s management and operation cannot be ignored, HSBC Holdings PLC is still the largest shareholder of Ping An. Thus, HSBC Holdings PLC has easily appointed certain important members of Ping An’s board. The comparatively dispersed ownership structure of Ping An would likely benefit minority and individual shareholders, since the tunnelling behaviour of the major shareholders and

⁵⁸⁵ Ping An Insurance (Group) Company of China Limited, *Ping An Annual Reports 2011*, p. 111, available at: <http://ir.pingan.com/en/gongsibaogao/index.shtml>, accessed November 4, 2012.

managers could largely be suppressed. These facts can reflect Proposition 4, which argues that foreign listing will improve some aspects of the corporate governance of Chinese companies.

III. THE TSINGTAO BREWERY COMPANY LIMITED (TSINGTAO BREWERY)

a) Overview

The Tsingtao Brewery Company Limited (hereinafter referred to as “Tsingtao Brewery”)⁵⁸⁶ was China’s largest brewery, as well as beer exporter. It was established by a group of German and English businessmen on August 15, 1903 as the Germania Brewery, with an initial capital of 400,000 Mexican silver dollars divided into 4,000 shares priced at US\$ 100 each.⁵⁸⁷ It was owned until 1916 by The Anglo-German Brewery Co., Ltd., which was based in Hong Kong, since Germany had obtained a 99-year lease of the Shandong province in 1898 and administered the Kiaochow peninsula as a colony.⁵⁸⁸ However, the Japanese soon occupied Qingdao City and seized Tsingtao Brewery. When World War II ended, China’s central government took control of Tsingtao Brewery. Shortly after China’s civil war ended in 1949, the Communist regime resolved to have Tsingtao Brewery nationalised, and it then became a state-owned business.

⁵⁸⁶ The stock symbol of Tsingtao Brewery on the HKEx is 168, on the SSE is 600600, and on Over-The-Counter Bulletin Board (OTCBB) is TSGTY.

⁵⁸⁷ See Joe Investor Online, *Tsingtao Brewery Information*, available at: <http://www.joeinvestoronline.com/library/Tsingtao-Brewery.php>, accessed February 1, 2011.

⁵⁸⁸ Carlisle, Rodney P., *World War I*, Facts on File, New York, 2007, p. 37.

Tsingtao Brewery began its privatisation and reorganisation process from the early 1990s by merging with a number of other breweries in Qingdao city. On July 15, 1993, Tsingtao Brewery issued 317.6 million H shares at HK\$ 2.80 per share on the HKEx and raised HK\$114 million in total; thus, it became the first of the nine Chinese State-Owned Enterprises listed on the Hong Kong Stock Exchange.⁵⁸⁹ Anheuser-Busch InBev, the American brewer of Budweiser beer, purchased around 5 per cent equity of Tsingtao in the IPO and eventually lifted its holding to 27 per cent in 2005.⁵⁹⁰ In 2009, Anheuser-Busch InBev sold its 19.9 per cent stake of Tsingtao to Asahi Breweries of Japan for US\$ 667 million to help reduce its debts.⁵⁹¹ Shortly after, Anheuser-Busch InBev transferred its remaining 7 per cent stake to CHEN Fashu, a shareholder of the gold mining company ZiJin Mining of China, for US\$ 235 million.⁵⁹² Asahi Beer was the second largest shareholder of Tsingtao Brewery at this time, holding a 26.99 per cent stake in contrast to the 30.89 per cent held by Tsingtao Brewery Group, the parent company of Tsingtao Brewery.⁵⁹³

Tsingtao Brewery has developed an aggressive marketing strategy in recent years and made some acquisitions in Mainland China and Hong Kong. It successively

⁵⁸⁹ Lee, Peter Nan-Shong and Lo, Carlos Wing-Hung, *Remaking China's Public Management*, Greenwood Publishing Group, Westport, 2001, p. 174.

⁵⁹⁰ See China Daily, "Anheuser Lifts Tsingtao Stake to 27%", *China Daily*, April 12, 2005, available at: http://www.chinadaily.com.cn/english/doc/2005-04/12/content_433490.htm, accessed February 1, 2011.

⁵⁹¹ See The New York Times, "Asahi Buying Tsingtao Stake", *The New York Times*, February 3, 2009, available at: <http://www.nytimes.com/2009/01/23/business/worldbusiness/23iht-beer.1.19626621.html>, accessed February 1, 2011.

⁵⁹² See Inman, Daniel, "Anheuser-Busch InBev Sells Final Stake in Tsingtao", *Bloomberg Businessweek*, May 11, 2009, available at: http://www.businessweek.com/globalbiz/content/may2009/gb20090511_471446.htm, accessed February 1, 2011.

⁵⁹³ See SinoCast Daily Business Beat, "Asahi Becomes Second Largest Shareholder of Tsingtao Brewer", *HighBeam Business*, May 1, 2009, available at: <http://business.highbeam.com/436195/article-1G1-198836714/asahi-becomes-second-largest-shareholder-tsingtao-brewer>, accessed February 2, 2011.

purchased equities of Carlsberg Hong Kong, Asia Shuang He Sheng Five Star Beer Co., Ltd., Three Ring Asia Pacific Beer Co., Ltd., and New Laoshan Brewery in the early 2000s.⁵⁹⁴ After the consolidation, Tsingtao Brewery gradually increased its production quantities so as to raise its share of the domestic market as well as the international market. Now Tsingtao Brewery was one of the largest comprehensive trans-regional enterprises in China.

b) Corporate Structure and Ownership Structure

⁵⁹⁴ Yau, Winston, "Tsingtao Takes Stakes in Four Breweries", *South China Morning Post*, November 15, 2001, B4.

Table 7.5 The Substantial Shareholders of Tsingtao Brewery Company Limited 2002-2011

Year	Name of Substantial Shareholders	Class of Shares	Nature of Shareholding	Number of Shares	Percentage of Total Shares
2002	State-owned Assets Supervision and Administration Commission of the People's Government of Qingdao	A shares	State-owned shares	399,820,000	39.98%
	HKSCC Nominees Limited*	H shares	Outstanding shares	291,212,380	29.1%
	Anheuser-Busch Companies Inc.	H shares	Outstanding shares	45,000,000	4.5%
	Bank of China, Shandong Province Branch	A shares	Legal person shares	29,250,000	2.93%
	Construction Bank of China, Qingdao Branch	A shares	Legal person shares	19,080,000	1.91%
	Qingdao Huaqing Financial Services Company Limited	A shares	Legal person shares	5,000,000	0.5%
	Taihe Fund	A shares	Outstanding shares	4,334,174	0.43%
	Fenghe Fund	A shares	Outstanding shares	3,685,420	0.37%
	E Fund Stable Growth Fund	A shares	Outstanding shares	3,552,808	0.36%
	Han Sheng Fund	A shares	Outstanding shares	3,442,384	0.34%
2003	State-owned Assets Supervision and Administration Commission of the People's Government of Qingdao ⁽¹⁾	A shares	State-owned shares	399,820,000	37.72%
	HKSCC Nominees Limited	H shares	Outstanding shares	293,981,380	27.73%
	Anheuser-Busch Companies Inc. ⁽²⁾	H shares	Outstanding shares	105,000,000	9.91%
	Bank of China, Shandong Province Branch	A shares	Legal person shares	29,250,000	2.76%
	Construction Bank of China, Qingdao Branch	A shares	Legal person shares	19,080,000	1.8%
	E Fund Stable Growth Fund	A shares	Outstanding shares	6,437,028	0.61%
	Rongtong New Blue Chip Fund	A shares	Outstanding shares	5,025,025	0.47%
	Qingdao Huaqing Financial Service Company Limited	A shares	Legal person shares	5,000,000	0.47%
	Tongqian Fund	A shares	Outstanding shares	4,976,131	0.47%
	Han Sheng Fund	A shares	Outstanding shares	3,708,475	0.35%
2004	State-owned Assets Supervision and Administration Commission of the People's Government of Qingdao ⁽³⁾	A shares	State-owned shares	399,820,000	37.72%

	HKSCC Nominees Limited	H shares	Outstanding shares	294,466,380	27.78%
	Anheuser-Busch Jade Hong Kong Holding Co., Ltd. ⁽⁴⁾	H shares	Outstanding shares	105,000,000	9.91%
	China Orient Asset Management Corporation	A shares	Legal person shares	29,250,000	2.76%
	Construction Bank of China, Qingdao Branch	A shares	Legal person shares	19,080,000	1.8%
	E Fund Stable Growth Fund	A shares	Outstanding shares	9,626,514	0.91%
	Fortis Haitong Returns Growth Fund	A shares	Outstanding shares	6,769,007	0.64%
	INVESCO Great Wall Neixu Fund	A shares	Outstanding shares	6,039,137	0.57%
	Qingdao Huaqing Financial Service Company Limited	A shares	Legal person shares	5,000,000	0.47%
	Rongtong New Blue Chip Fund	A shares	Outstanding shares	4,890,900	0.46%
2005	State-owned Assets Supervision and Administration Commission of the People's Government of Qingdao	A shares	State-owned shares	399,820,000	30.6%
	HKSCC Nominees Limited	H shares	Outstanding shares	294,713,373	22.5%
	Anheuser-Busch Jade Hong Kong Holding Co., Ltd.	H shares	Outstanding shares	261,643,836	20%
	Law Debenture Trust (Asia) Limited ⁽⁵⁾	H shares	Outstanding shares	91,575,342	7.0%
	China Orient Asset Management Corporation	A shares	Legal person shares	29,250,000	2.2%
	China Construction Bank, Qingdao Branch	A shares	Legal person shares	19,080,000	1.5%
	National Social Security Fund 108	A shares	Outstanding shares	9,128,578	0.7%
	Tianyuan Securities Investment Fund	A shares	Outstanding shares	8,953,602	0.7%
	Bank Of Communications Schroder Core Equity Fund	A shares	Outstanding shares	8,912,255	0.7%
	National Social Security Fund 102	A shares	Outstanding shares	6,990,197	0.5%
2006	State-owned Assets Supervision and Administration Commission of the People's Government of Qingdao ⁽⁶⁾	A shares	Outstanding shares in lock-up period ⁽⁷⁾	399,820,000	30.56%
	HKSCC Nominees Limited	H shares	Outstanding shares	295,265,373	22.57%
	Anheuser-Busch Jade Hong Kong Holding Co., Ltd.	H shares	Outstanding shares	261,643,836	20.0%
	Law Debenture Trust (Asia) Limited	H shares	Outstanding shares	91,575,342	7.0%

	China Construction Bank, Qingdao Branch	A shares	Outstanding shares in lock-up period	17,574,505	1.34%
	National Social Security Fund 108	A shares	Outstanding shares	17,194,184	1.31%
	Merrill Lynch International Shenyin & Wanguo - HSBC - Merrill Lynch International	A shares	Outstanding shares	13,865,587	1.06%
	National Social Security Fund 103	A shares	Outstanding shares	13,011,017	0.99%
	National Social Security Fund 102	A shares	Outstanding shares	12,041,297	0.92%
	CPF Jingcui Growth Equity Securities Investment Fund	A shares	Outstanding shares	9,052,602	0.69%
2007	Tsingtao Brewery Group Company Limited ⁽⁸⁾	A shares	Outstanding shares in lock-up period	399,820,000	30.56%
	HKSCC Nominees Limited	H shares	Outstanding shares	298,256,072	22.80%
	Anheuser-Busch Jade Hong Kong Holding Co., Ltd.	H shares	Outstanding shares	261,643,836	20.0%
	Law Debenture Trust (Asia) Limited	H shares	Outstanding shares	91,575,342	7.0%
	China Jianyin Investment Company Ltd.	A shares	Outstanding shares in lock-up period	17,574,505	1.35%
	National Social Security Fund 108	A shares	Outstanding shares	15,000,000	1.15%
	National Social Security Fund 102	A shares	Outstanding shares	10,749,300	0.82%
	Boshi Thematic Sector Equity Securities Investment Fund	A shares	Outstanding shares	9,000,000	0.69%
	Dacheng Blue Chip Steady Securities Investment Fund	A shares	Outstanding shares	8,194,667	0.63%
	National Social Security Fund 106	A shares	Outstanding shares	7,000,000	0.54%
2008	Tsingtao Brewery Group Company Limited	A shares	Outstanding shares in lock-up period	404,092,250 ⁽⁹⁾	30.89%
	HKSCC Nominees Limited	H shares	Outstanding shares	297,118,072	22.71%
	Anheuser-Busch Jade Hong Kong Holding Co., Ltd. ⁽¹⁰⁾	H shares	Outstanding shares	261,643,836	20.0%
	Law Debenture Trust (Asia) Limited	H shares	Outstanding shares	91,575,342	7.0%

	China Jianyin Investment Company Ltd.	A shares	Outstanding shares in lock-up period	17,574,505	1.35%
	National Social Security Fund 108	A shares	Outstanding shares	13,000,000	0.99%
	Industrial Trend Investment Mixed Securities Investment Fund	A shares	Outstanding shares	12,285,524	0.94%
	National Social Security Fund 102	A shares	Outstanding shares	10,000,000	0.76%
	Industrial Global Vision Stock Securities Investment Fund	A shares	Outstanding shares	9,767,624	0.75%
	Dacheng Blue Chip Steady Securities Investment Fund	A shares	Outstanding shares	8,107,570	0.62%
2009	Tsingtao Brewery Group Company Limited	A shares	Outstanding shares in lock-up period	411,400,050 ⁽¹¹⁾	30.45%
	HKSCC Nominees Limited	H shares	Outstanding shares	285,868,342	21.16%
	Asahi Breweries, Ltd. ⁽¹²⁾	H shares	Outstanding shares	266,721,836	19.74%
	ICBC (Asia) Nominee Limited	H shares	Outstanding shares	91,641,342	6.78%
	Dacheng Blue Chip Steady Securities Investment Fund	A shares	Outstanding shares	18,013,310	1.33%
	China Jianyin Investment Company Ltd.	A shares	Outstanding shares in lock-up period	17,574,505	1.30%
	National Social Security Fund 108	A shares	Outstanding shares	11,465,900	0.85%
	National Social Security Fund 102	A shares	Outstanding shares	10,000,000	0.74%
	Industrial Trend Investment Mixed Securities Investment Fund	A shares	Outstanding shares	9,747,800	0.72%
	Yinhua Core Value Selected Stock Securities Investment Fund	A shares	Outstanding shares	8,411,747	0.62%
2010	Tsingtao Brewery Group Company Limited	A shares	Outstanding A shares in lock-up period	411,400,050	30.45%
	HKSCC Nominees Limited	H shares	Outstanding shares	373,649,484	27.66%
	Asahi Breweries, Ltd.	H shares	Outstanding shares	270,127,836	19.99%
	China Jianyin Investment Company Ltd.	A shares	Outstanding shares in	17,574,505	1.30%

			lock-up period		
	Industrial Bank Co., Ltd. - Industrial Trend Investment Mixed Securities Investment Fund	A shares	Outstanding shares	11,518,606	0.85%
	National Social Security Fund 108	A shares	Outstanding shares	11,465,900	0.85%
	Bank of Communications - Bosera Emerging Growth Stock Securities Investment Fund	A shares	Outstanding shares	9,999,387	0.74%
	National Social Security Fund 102	A shares	Outstanding shares	8,500,000	0.63%
	ICBC - Nuo'an Value Growth Stock Securities Investment Fund	A shares	Outstanding shares	8,000,000	0.59%
	Bank of Communications - Hua'an Strategy Selection Stock Securities Investment Fund	A shares	Outstanding shares	7,597,428	0.56%
2011	Tsingtao Brewery Group Company Limited	A shares and H shares	Outstanding shares	411,400,050	30.45%
	HKSCC Nominees Limited	H shares	Outstanding shares	373,747,484	27.66%
	Asahi Group Holdings Ltd. ⁽¹³⁾	H shares	Outstanding shares	270,127,836	19.99%
	China Jianyin Investment Company Ltd.	A shares	Outstanding shares	17,574,505	1.30%
	China Life Insurance Co., Ltd. - Dividends - Personal dividends - 005L - FH002Hu	A shares	Outstanding shares	14,348,359	1.06%
	Taikang Life Insurance Co., Ltd. - Dividends - Personal dividends - 019L - FH002Hu	A shares	Outstanding shares	9,700,000	0.72%
	National Social Security Fund 108	A shares	Outstanding shares	9,400,000	0.70%
	ICBC - E-Fund Value Growth Mixed Securities Investment Fund	A shares	Outstanding shares	7,206,331	0.53%
	Industrial Bank Co., Ltd. - Xingquan Trend Investment Mixed Securities Investment Fund	A shares	Outstanding shares	7,025,222	0.52%
	Morgan Stanley & Co. International PLC. - Morgan Stanley China A-share Fund	A shares	Outstanding shares	6,648,039	0.49%

Source: Adapted from Tsingtao Brewery Company Limited 2002-2011 Annual Reports⁵⁹⁵

* The number of Tsingtao Brewery's H shares held by HKSCC Nominees Limited excludes those H shares owned by the wholly-owned subsidiary of SASAC of Qingdao or Tsingtao Brewery Group Company Limited.

(1) State-owned Assets Supervision and Administration Commission of the People's Government of Qingdao (SASAC of Qingdao) and Anheuser-Busch became concerted parties after Anheuser-Busch was introduced into Tsingtao Brewery as a strategic investor.

⁵⁹⁵ Tsingtao Brewery Company Limited, *Tsingtao Brewery Annual Reports 2002-2011*, available at: <http://stock.tsingtao.com.cn/>, accessed November 12, 2012.

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- (2) Tsingtao Brewery and SASAC of Qingdao signed a Strategic Investment Agreement with U.S. brewery Anheuser-Busch on October 21st, 2002, and issued an aggregate of HK\$ 1,416,195,342 mandatorily convertible bonds to Anheuser-Busch; these bonds would be converted to H shares.
- (3) The strategic investment agreement between SASAC of Qingdao and Anheuser-Busch constitutes a Section 317 agreement under the Hong Kong Securities and Futures Ordinance.⁵⁹⁶ Thus, SASAC of Qingdao is deemed to have interests in the H shares held by Anheuser-Busch, while Anheuser-Busch is deemed to have interests in the A shares held by SASAC of Qingdao.
- (4) Anheuser-Busch Jade Hong Kong Holding Co., Ltd. is a fully-owned subsidiary of Anheuser-Busch Companies Inc.
- (5) Law Debenture Trust (Asia) Limited held H shares of Tsingtao Brewery under entrusted voting, and it undertook such voting rights under the written instruction of SASAC of Qingdao.
- (6) The Split Share Structure Reform proposal of Tsingtao Brewery was approved by the Shareholder's Meeting on October 16, 2006, by which the shareholders of non-tradable shares would pay 0.178777 share and RMB 0.24 for each tradable A share. When the Split Share Structure Reform of Tsingtao Brewery was finished by December 22, 2006, the total shares held by the shareholders of non-tradable shares decreased from 453,150,000 shares to 417,394,505 shares.
- (7) After the Split Share Structure Reform, the shares held by SASAC of Qingdao were subject to a lock-up period.
- (8) SASAC of Qingdao unconditionally transferred 399,820,000 A shares to its wholly-owned subsidiary Tsingtao Brewery Group Company Limited in April 2007. The transfer of these A shares had been approved by SASAC of China.
- (9) Tsingtao Brewery Group Company Limited instructed Tsingtao Brewery to increase 3,260,250 A shares by the secondary market of the Shanghai Stock Exchange, as well as 1,012,000 H shares through a Hong Kong-based wholly-owned subsidiary.
- (10) Anheuser-Busch Companies, Inc. merged with InBev SA in November 2008 and was renamed as "Anheuser-Busch InBev SA", which obtained all the H shares of Tsingtao Brewery previously held by Anheuser-Busch Companies, Inc.
- (11) Upon the approval of the 2007 first Extraordinary Shareholder's Meeting and CSRC, Tsingtao Brewery issued 6-year-long convertible bonds valued at RMB 1.5 billion in April 2008, and 105 million warrants were issued to the subscribers of these bonds. After these warrants were successfully exercised, Tsingtao Brewery issued 42,763,617 A shares in 2008.
- (12) Anheuser-Busch InBev S.A sold the Tsingtao shares it held to Asahi Breweries in early 2009. Then Anheuser-Busch Jade Hong Kong Holding Co., Ltd, a wholly-owned subsidiary of Anheuser-Busch InBev S.A, entered into an agreement with CHEN Fashu in May 2009, by which CHEN obtained about 7% holding in Tsingtao Brewery.
- (13) Asahi Breweries, Ltd. was restructured into Asahi Group Holdings Ltd. in July 2011.

⁵⁹⁶ Hong Kong, *Hong Kong CAP 571 Securities and Futures Ordinance*, available at: <http://www.hkllii.hk/eng/hk/legis/ord/571/>, accessed November 13, 2012.

Generally, Tsingtao Brewery can be deemed as a Chinese SOE, and Table 7.5 shows that the State-owned Assets Supervision and Administration Commission of the People's Government of Qingdao (SASAC of Qingdao) was the largest shareholder of Tsingtao Brewery in 2002, with a shareholding of almost 40%. As mentioned earlier, the HKSCC was only a nominee company established by the HKEx, and it only provided nominee services such as voting and distribution of dividends for investors. Thus, Anheuser-Busch Companies Inc. (Anheuser-Busch) was the second largest shareholder of Tsingtao Brewery in 2002, when it held 4.5% of Tsingtao Brewery's shares. Besides, three Chinese state-owned companies owned legal person shares of Tsingtao Brewery in 2002, when the total shareholding of these three companies accounted for about 5.3% of all Tsingtao Brewery's shares. In 2002, several other Chinese investment companies also held a small fraction of Tsingtao Brewery's A shares.

From 2003 to 2005, the shareholding of SASAC of Qingdao decreased to about 30%, while the shareholding of these Chinese state-owned companies that held the legal person shares of Tsingtao Brewery remained almost unchanged. However, Anheuser-Busch gradually increased its shareholding to 20% by converting the convertible bonds of Tsingtao Brewery that it held into H shares. In 2006, all the shares of Tsingtao Brewery were converted into outstanding shares after the implementation of the Split Share Structure Reform, but those A shares held by SASAC of Qingdao were subject to a lock-up period. The SASAC of Qingdao

transferred all Tsingtao Brewery's shares that it held to a wholly-owned subsidiary in 2007, which was Tsingtao Brewery Group Company Limited (Tsingtao Group Company). The shareholding of Tsingtao Group Company in Tsingtao Brewery did not substantially change in the following four years, remaining at around 30.5%. It should be noted that Law Debenture Trust (Asia) Limited became a major shareholder of Tsingtao Brewery with a shareholding of 7% from 2005 to 2008, but this company actually held H shares of Tsingtao Brewery under entrusted voting, and it undertook such voting rights under the instruction of SASAC of Qingdao.

Asahi Breweries, Ltd. replaced Anheuser-Busch as the second largest shareholder of Tsingtao Brewery in early 2009, and Asahi still held over 270 million Tsingtao Brewery H shares as of 2011, which accounted for about 20% of the total shareholding. In addition, it rates mention that a Chinese individual investor named CHEN Fashu purchased some Tsingtao Brewery H shares from a wholly-owned subsidiary of Anheuser-Busch in mid-2009. CHEN owned about 7% of Tsingtao Brewery's total shares as of 2011, and these shares were registered under HKSCC Nominees Limited.⁵⁹⁷

Seemingly, Tsingtao Brewery has been transferred into an overseas listed company with many foreign shareholders and foreign strategic investors. However, this argument does not withstand close scrutiny. The shareholding of SASAC of Qingdao

⁵⁹⁷ The shareholding of CHEN Fashu is omitted in Table 7.5.

far outweighed that of the other shareholders from 2002 to 2004. After 2005, the shareholding of the State declined considerably, but never fell below 30%, which still exceeded that of the second largest shareholder by 10% in every year. In this regard, the Chinese government has never loosened its hold on Tsingtao Brewery. Although there was a foreign strategic investor (Anheuser-Busch) in the ownership structure of Tsingtao Brewery from 2002 to 2008, the voting interest of Anheuser-Busch was significantly less than that of SASAC of Qingdao, since Law Debenture Trust (Asia) Limited undertook the voting right in Tsingtao Brewery under the written instruction of SASAC of Qingdao. Essentially, Tsingtao Brewery is still a Chinese SOE, as the Chinese State retains the final voice over its operation and management. Furthermore, as there is no immediate prospect that China's government will relax its grip on Tsingtao Brewery, traditional Chinese corporate governance ideas will probably remain strong in Tsingtao Brewery. This can be reflected in the argument of Proposition 5.

c) Board Composition and Supervisory Board Composition

The composition of the Tsingtao Brewery's board and supervisory board was disclosed in the annual reports of Tsingtao Brewery. The board of Tsingtao Brewery comprised of eleven directors, including a chairman, vice chairman, three executive directors, two non-executive directors and four independent non-executive directors. The chairman, vice chairman and three executive directors were nominated by

SASAC of Qingdao, while the two non-executive directors were nominated respectively by Asahi Breweries and CHEN Fashu. Then, the board nominated the other four independent non-executive directors. The appointment of directors once again established that the State still played a dominant role in the operation of Tsingtao Brewery, since the Chinese government appointed almost all key members of the board. The second and third largest shareholder, Asahi Brewery and CHEN, were only able to designate two non-executive directors. Besides, these board members appointed by the Chinese government would play a leading role in appointing independent non-executive directors, since such independent non-executive directors were collectively nominated by the board of Tsingtao Brewery. Tsingtao Brewery had also established three board sub-committees, including an audit and finance committee, strategy and investment committee and corporate governance and remuneration committee.

The supervisory board of Tsingtao Brewery had seven members, consisting of a chairman, a supervisor as the shareholder representative, two independent supervisors and three supervisors as staff representatives. The supervisor as the shareholder representative was nominated by Asahi Brewery. The main task of the supervisory board in Tsingtao Brewery was to guard the interests of the company and its employees, as well as monitor the functions of the board. It should be noted that the chairman of the supervisory board used to serve as the deputy commissioner of Qingdao Finance Bureau. Furthermore, two independent supervisors had also

once held high public office. The three supervisors chosen as staff representative were at the time holding senior management positions in Tsingtao Brewery. It seems that the State appointed all the supervisors, except the one nominated by Asahi Brewery as the shareholder representative. It is doubtful whether the supervisory board could play its functional role in the operation of Tsingtao Brewery, since its composition was largely following the inclinations of the Chinese government.

d) Related Party Transactions and Corporate Governance

Related party transactions were disclosed in the annual reports of Tsingtao Brewery. Tsingtao Brewery entered into some agreements with related parties, and these related parties were subsidiaries of Tsingtao Brewery and subsidiaries of Asahi Brewery. The substance of such related party transaction mainly covered beer products sales and distribution. There were no clear indications that the corporate governance of Tsingtao Brewery suffered ill effects from these related party transactions, and all related party transactions were conducted on normal commercial terms, and these terms were no better than those Tsingtao Brewery would provide to any independent third party. As related party transactions are a very common issue in most overseas listed Chinese SOEs, the existence of a major foreign shareholder probably can produce certain effect in remedying the problem caused by related party transactions, since the foreign shareholder has the motive to guard its own interests against infringement.

Article 125 of China's Company Law provided that the directors of listed companies had no right to vote or involve themselves in board meetings when the board of directors were attempting to adopt a resolution on matters concerning those enterprises that such directors had a related-party relationship with. In addition, the said resolution had to be passed by more than half of those directors without any related-party relationship with the concerned enterprises. The provisions of Article 125 should arguably help to tackle the problem of related-party transactions. However, Mr K (Interviewee No.11) proposed that certain senior directors of listed Chinese companies, particularly the chairmen, generally held higher political office over other directors. Mr K would not rule out the possibility that such senior directors might exercise undue influence upon other unconnected directors over the resolutions with respect to related-party transactions, even when they were unable to exercise their own voting rights independently. When the chairman and vice chairman of Tsingtao Brewery were all nominated by SASAC of Qingdao, they were most likely to have held the political ascendancy over the other directors. It was doubtful whether they would have exercised undue influence upon other directors over the related-party transactions.

CHAPTER 8. CONCLUSION

Mainland China has developed rapidly from an underdeveloped country into a fledgling nation that has strengthened and become increasingly more influential over the last three decades, while some commentators have even argued that China could become the primary driver of the global economy within only a few decades.⁵⁹⁸ Nevertheless, the state-driven method and administrative approaches adopted by the Chinese government to manage its economy have been roundly criticised by western scholars.⁵⁹⁹ Further, the impact of its unstable political environment gradually impeding the prospects of China's rise is not to be underestimated, while the widely-accepted modern values that western developed countries have placed such high value on, such as democracy, due process and the rule of law, have been treated by Chinese governments with indifference. Moreover, it has not been unheard of for the Chinese government to restrict the civil liberties of ordinary Chinese citizens. Significantly, Mr K (Interviewee No. 11) argued that the greatest economic challenge that currently occupies the minds of China's leaders and their protégés is that the country's remarkable economic growth will not tangibly improve the welfare of most working-class Chinese.

With the intention of developing a market economy, most major Chinese

⁵⁹⁸ Guthrie, Doug, *China and Globalization: The Social, Economic and Political Transformation of Chinese Society*, Routledge, New York, 2012, p. 3.

⁵⁹⁹ Yueh, Linda, *China's Growth: The Making of an Economic Superpower*, Oxford University Press, Oxford, 2013, p. 301.

state-owned enterprises (SOEs) have been transformed into modern joint-stock companies since the 1980s, while some leading Chinese SOEs began to consider the possibilities of floating on foreign stock exchanges in as early as 1990. The Chinese government even launched a high-profile Split Share Structure Reform after 2002, through which all the non-tradable State-owned Shares and Legal Person Shares of those Chinese companies listed on the Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE) would be converted into tradable shares. However, whether this reform will have a markedly positive effect on the corporate governance practices of listed Chinese companies remains to be seen.

This PhD research has resulted in a detailed theoretical and empirical investigation into the corporate governance practices of Chinese companies that have been listed on foreign stock exchanges for certain periods; this has allowed us to scrutinise the influence that foreign listing has exerted on the corporate governance of these companies. Some experts offered powerful reflections, such as Mr K (Interviewee No. 11), a participant with significant experience in the corporate governance of major Chinese companies, who provided valuable criticisms and remarks in his empirical interviews. While several major propositions regarding the corporate governance of overseas listed Chinese companies were presented in the first chapter of this thesis, these experts' comments will help to scrutinise and reflect upon these propositions.

As stated in Chapter 2, although some companies under private ownership have emerged as competitive players in recent years, the major SOEs still occupy an almost unassailable position in China's stock markets. The ownership structures of these Chinese SOEs are often highly concentrated, in which the government has never relinquished its status as the dominant shareholder. On the whole, illiquidity is intrinsic to the character of China's stock market, as the ownership of China's major companies is not actively traded. Technically, the market for corporate control is uncompetitive in China, and the impact of external corporate control on the governance of China's companies is insignificant. The major Chinese SOEs' disdain for minority investors has been expressed by their casual disregard for the empirical research conducted through this PhD study. Such a disagreeable experience resulting from empirical research provides evidence that the transparency of China's stock market and major companies is still in its infancy, while improved protection for the minority investors continues to require attention. These facts imply that China's stock markets embody several distinguishing characteristics that are quite distinct from the market-oriented Anglo-American corporate governance model, and which largely reflect an insider control system [Proposition 1].

The corporate governance of China is becoming increasingly complex, as the government strives to benefit from the hindsight of other nations. In the case of single-tier boards of the Anglo-American model, independent directors have been introduced into the corporate governance structure as a monitoring mechanism to

tackle agency problems such as higher agency costs and agency risks, since the typically diffused Anglo-American shareholding structures tend to give the senior management substantial control rights over the company. As a major feature of the Anglo-American model, the independent directors system was adopted in China as early as 2001; however, it seems that such independent directors only play a passive role in the corporate governance of Chinese companies, and therefore their independence may also be brought into question.

The two-tier board is a key characteristic that can differentiate the German-Japanese insider-based model from the UK-US model, and the supervisory board plays a significant monitoring role in this system as it has been granted a role in the appointment of the management board. This major feature of the insider control system has been adopted by China. In addition, the employee representatives, who play an active role in the German model of the insider control system, have also been introduced into China. Unfortunately, the supervisory board's discretion is somewhat limited in the corporate governance of Chinese companies, and almost all members of the supervisory board are selected by the management. The selection of employee representatives closely echoes that of the supervisory board in China, as it is highly improbable that the management would appoint any employee representative who would effectively challenge them.

Excluding the supervisory board and employee representatives, banks and financial

institutions also function as an external monitoring mechanism in the German-Japanese corporate governance model. With China's securities markets still underdeveloped, major Chinese companies lean heavily on debt financing from banks under certain conditions, and as the Chinese banking sector is dominated by the four State-Owned Commercial Banks (SOCBs), the external monitoring by banks may also be a contributing factor in shaping the corporate governance structures of major Chinese companies.

Strictly speaking, corporate governance in China cannot be categorised as either an Anglo-American market-oriented model or a German-Japanese insider-based model, since it attempts to improve its original governance practices by transplanting advantageous features from both corporate governance models. However, features indigenous to Chinese corporate governance, such as concentrated ownership, weak public disclosure, poor protection for minority shareholders, and passive market for corporate control, together with the banks' considerable contribution to the corporate financing of major Chinese companies, will serve to illustrate that China's corporate governance can reflect insider control system patterns [Proposition 2].

On the whole, the Mainland government still exercises firm control over the major Chinese SOEs, especially for those SOEs that have been defined as "strategically important", and even when such companies have been listed on foreign stock exchanges [Proposition 5]. Technically, the Chinese government has tried since 2000

to introduce some modern corporate governance concepts, such as the independent director and the model code of corporate governance, into the governance practices of major Chinese SOEs. Moreover, overseas listed Chinese companies have also begun to commit to higher standards of corporate governance after foreign listing, through the phased introduction of the applicable code provisions of the corporate governance code issued by the respective foreign stock exchanges. For those Chinese companies that listed on the New York Stock Exchange (NYSE), they have been required to disclose the material differences between their corporate governance standards and the NYSE corporate governance rules applicable to US companies listed on the NYSE by the listing rules of the Exchange (Section 303A-11). The stricter regulation and improved corporate governance standards of the foreign jurisdictions in which Chinese companies list would arguably support such companies to improve their corporate governance, regardless of being SOEs or under private ownership [Proposition 4].

Nevertheless, there is no immediate prospect of the Chinese government loosening its grip on the major Chinese SOEs, since it still maintains its dominant shareholder status, especially in those large centrally-owned companies. Significantly, the Chinese government has *de facto* plenary powers to appoint the chairmen, executive directors, senior managers and certain supervisors in the majority of China's large SOEs. As most overseas listed Chinese SOEs have a state-owned parent company as their controlling shareholder, the vital role played by the Communist Party's

committee in the operation of these companies cannot be ignored. Furthermore, with most Chinese SOEs having now concluded their Spilt Share Structure Reforms, the results of this reform appear to be negligible, as the Chinese government shows no sign of decreasing its shareholding in these SOEs, or relaxing the overwhelming influence that it has in dictating the direction of these companies [Proposition 3].

Therefore, traditional Chinese corporate governance approaches are likely to prevail in foreign listed Mainland companies. Furthermore, the current single-party socialist political system of China, alongside the slow pace of social and economic reforms, will in the longer term serve to ensure that political factors will continue to determine the nature of corporate governance in China's overseas listed companies.

APPENDIX: FULL LIST OF CHINESE OVERSEAS LISTED COMPANIES

I. CHINESE COMPANIES LISTED ON NEW YORK STOCK EXCHANGE (NYSE)

(rated according to their market capitalisation)

English Name of Company	Ticker Symbol	Listed Stock Exchange	Market Capitalisation (descending US\$)*	Listing Date
China Mobile Limited (China Mobile)	CHL	NYSE	\$4,817,311,590	22 Oct 1997 (IPO) (ADR)
PetroChina Company Limited	PTR	NYSE	\$1,627,920,000	06 Apr 2000 (IPO) (ADR)
New Oriental Education & Technology Group Inc. (New Oriental)	EDU	NYSE	\$1,268,276,800	07 Sep 2006 (IPO)
Mindray Medical International Limited	MR	NYSE	\$1,175,235,880	26 Sep 2006 (IPO) (ADR)
China National Offshore Oil Corporation (CNOOC) Limited	CEO	NYSE	\$1,070,926,260	27 Feb 2001 (IPO) (ADR)
China Life Insurance Company	LFC	NYSE	\$1,062,736,030	17 Dec 2003 (IPO) (ADR)
Suntech Power Holdings Co., Ltd. (Suntech)	STP	NYSE	\$769,881,600	14 Dec 2005 (IPO) (ADR)
Giant Interactive Group Inc.	GA	NYSE	\$741,124,670	01 Nov 2007 (IPO)
China Petroleum and Chemical Corporation (Sinopec)	SNP	NYSE	\$725,462,100	18 Oct 2000 (IPO) (ADR)
LDK Solar Co., Ltd.	LDK	NYSE	\$564,536,850	01 Jun 2007 (IPO) (ADR)
Huaneng Power International, Inc.	HNP	NYSE	\$511,838,780	06 Oct 1994 (IPO) (ADR)
China Unicom Limited	CHU	NYSE	\$466,087,750	21 Jun 2000 (IPO) (ADR)
American Oriental Bioengineering, Inc.	AOB	NYSE	\$446,019,300	18 Dec 2006
Longtop Financial Technologies Limited	LFT	NYSE	\$436,778,480	24 Oct 2007 (IPO) (ADR)
World Art Net	MLWAN	Euronext Paris - Marche Libre	\$380,951,228	17 Jan 2008

Aluminum Corporation of China Limited (Chalco)	ACH	NYSE	\$314,607,930	11 Dec 2001 (ADR)
American Dairy, Inc.	ADY	NYSE ARCA	\$266,485,440	18 Apr 2005
E-House (China) Holdings Limited	EJ	NYSE	\$264,845,100	08 Aug 2007 (IPO) (ADR)
WuXi PharmaTech (Cayman) Inc.	WX	NYSE	\$256,471,890	09 Aug 2007 (IPO) (ADR)
China Security & Surveillance Technology, Inc.	CSR	NYSE	\$247,552,200	29 Oct 2007
Yingli Green Energy Holding Company	YGE	NYSE	\$230,331,660	08 Jun 2007 (IPO) (ADR)
China Telecom Corporation Limited	CHA	NYSE	\$222,731,670	14 Nov 2002 (IPO) (ADR)
Huacheng Real Estate	ALHUA	ALTERNEXT PARIS	\$218,852,183	08 Apr 2008
Trina Solar Limited (Trina)	TSL	NYSE	\$194,192,400	19 Dec 2006 (IPO)
Qiao Xing Mobile Communication Co., Ltd.	QXM	NYSE	\$142,750,156	03 May 2007 (IPO)
China Nepstar Chain Drugstore Ltd.	NPD	NYSE	\$124,646,060	09 Nov 2007 (IPO)
Sincere Pharmaceutical Group	SCR	NYSE	\$115,517,150	20 Apr 2007 (IPO) (ADR)
General Steel Holdings, Inc.	GSI	NYSE	\$112,361,190	08 Aug 2008
WSP Holdings Limited	WH	NYSE	\$109,069,450	06 Dec 2007 (IPO) (ADR)
China Digital TV Holding Co., Ltd.	STV	NYSE	\$102,806,720	05 Oct 2007 (IPO) (ADR)
ReneSola Ltd.	SOL	NYSE	\$100,225,730	29 Jan 2008 (IPO) (ADR)
China Corn Oil	ALCCO	ALTERNEXT PARIS	\$97,855,401	25 Mar 2008
Gushan Environmental Energy Limited	GU	NYSE	\$91,547,700	19 Dec 2007 (IPO) (ADR)
Yanzhou Coal Mining Company Limited	YZC	NYSE	\$89,743,780	31 Mar 1998 (IPO) (ADR)
Guangshen Railway Company Limited	GSH	NYSE	\$80,861,280	13 May 1996 (IPO) (ADR)
VanceInfo Technologies, Inc.	VIT	NYSE	\$76,162,640	12 Dec 2007 (IPO) (ADR)
China Photovoltaic Group (CNPV)	ALCNP	ALTERNEXT PARIS	\$70,381,259	14 Aug 2008
Sinopec Shanghai Petrochemical Company Limited	SHI	NYSE	\$64,685,000	26 Jul 1993 (IPO) (ADR)
Semiconductor Manufacturing International Corporation (SMIC)	SMI	NYSE	\$62,859,000	17 Mar 2004 (IPO)

China Super Power Saving Holdings Ltd.	MLCSP	Euronext Paris - Marche Libre	\$59,213,253	25 Feb 2008
Noah Education Holdings, Ltd.	NED	NYSE	\$54,339,840	19 Oct 2007 (IPO) (ADR)
Xinyuan Real Estate Co., Ltd.	XIN	NYSE	\$46,966,490	12 Dec 2007 (IPO)
China Forest Industry Holdings Limited	MLCFI	Euronext Paris - Marche Libre	\$43,201,989	07 Oct 2008
Sinovac Biotech Ltd.	SVA	NYSE Alternext U.S.	\$37,084,630	26 Nov 2004
China Southern Airlines Company Limited	ZNH	NYSE	\$34,906,410	30 Jul 1997 (IPO) (ADR)
Agria Corporation	GRO	NYSE	\$31,686,300	07 Nov 2007 (IPO) (ADR)
Tongjitang Chinese Medicines Company	TCM	NYSE	\$26,286,700	16 Mar 2007 (IPO)
Acorn International, Inc.	ATV	NYSE	\$25,796,160	03 May 2007 (IPO) (ADR)
China Mass Media International Advertising Corp.	CMM	NYSE ARCA	\$15,507,950	04 Aug 2008 (IPO)
China Eastern Airlines Corporation Limited	CEA	NYSE	\$11,992,560	04 Feb 1997 (IPO) (ADR)
Easson Telecom Limited	MLEAS	Euronext Paris - Marche Libre	\$3,273,177	25 Mar 2008
Lionax	MLION	Euronext Paris - Marche Libre	\$1,394,801	22 Aug 2007
Vestasia Limited	MLVES	Euronext Paris - Marche Libre	\$282,907	20 Dec 07
China Distance Education Holdings Ltd.	DL	NYSE ARCA	/	30 Jul 2008 (IPO)
China Netcom Group Corporation (Hong Kong) Ltd. (CNC)	CN	Delisted	/	17 Nov 2004

Source: data collected from the official website of New York Stock Exchange and NASDAQ in October 2008, see New York Stock Exchange Euronext, Listings Directory, available at: http://www.nyse.com/about/listed/lc_all_overview.html, accessed October 27, 2008; and NASDAQ Stock Exchange, Company List (Exchange: NASDAQ - All NASDAQ Securities / Region: Asia - China), available at: <http://www.nasdaq.com/screening/companies-by-industry.aspx?industry=ALL&exchange=NASDAQ®ion=Asia&country=China>, accessed October 27, 2008.

* The market capitalisation of these Chinese companies listed in this table was considerably smaller than the official figures issued by the Chinese government, since the NYSE and NASDAQ probably adjusted for this by calculating on a free float basis, i.e., the market capitalisation that the NYSE and NASDAQ used is the value of the publicly tradable part of the Chinese company.

II. CHINESE COMPANIES LISTED ON HONG KONG STOCK EXCHANGE (HKEx)

(rated according to their market capitalisation)

English Name of Company	Ticker Symbol	Listed Stock Exchange	Listing Date	Market Capitalisation (descending HK\$)	Type
China Mobile Co., Ltd.	00941	HKEX Main Board	23 Oct 1997	\$1,359,476,863,733	Red Chip Companies
China Construction Bank Corporation	00939	HKEX Main Board	27 Oct 2005	\$831,349,610,800	H Share Companies
Industrial and Commercial Bank of China Ltd.	01398	HKEX Main Board	27 Oct 2006	\$294,020,016,945	H Share Companies
China National Offshore Oil Corporation (CNOOC) Ltd.	00883	HKEX Main Board	28 Feb 2001	\$281,415,959,899	Red Chip Companies
Bank of China Ltd.	03988	HKEX Main Board	01 Jun 2006	\$168,004,755,304	H Share Companies
China Life Insurance Co., Ltd.	02628	HKEX Main Board	18 Dec 2003	\$151,427,911,250	H Share Companies
China Unicom (Hong Kong) Ltd.	00762	HKEX Main Board	22 Jun 2000	\$150,314,471,395	Red Chip Companies
PetroChina Co., Ltd.	00857	HKEX Main Board	07 Apr 2000	\$120,263,730,000	H Share Companies
Bank of Communications Co., Ltd.	03328	HKEX Main Board	23 Jun 2005	\$101,944,949,161	H Share Companies
Bank of China Hong Kong (Holdings) Ltd.	02388	HKEX Main Board	25 Jul 2002	\$90,714,454,682	Red Chip Companies
China Petroleum & Chemical Corporation Limited	00386	HKEX Main Board	19 Oct 2000	\$84,405,854,640	H Share Companies
Ping An Insurance (Group) Co. of China Ltd.	02318	HKEX Main Board	24 Jun 2004	\$81,876,598,336	H Share Companies
China Overseas Land & Investment Ltd.	00688	HKEX Main Board	20 Aug 1992	\$66,567,247,103	Red Chip Companies
China Resources Power Holdings Co., Ltd.	00836	HKEX Main Board	12 Nov 2003	\$60,227,954,874	Red Chip Companies
China Shenhua Energy Co., Ltd.	01088	HKEX Main Board	15 Jun 2005	\$47,580,155,000	H Share Companies
China Merchants Holdings (International) Co., Ltd.	00144	HKEX Main Board	15 Jul 1992	\$43,415,021,826	Red Chip Companies
China Telecom Corporation Ltd.	00728	HKEX Main Board	15 Nov 2002	\$37,746,555,200	H Share Companies
China Resources Enterprise Ltd.	00291	HKEX Main Board	12 Nov 2003	\$35,828,146,800	Red Chip Companies

China Resources Land Ltd.	01109	HKEX Main Board	08 Nov 1996	\$35,828,137,877	Red Chip Companies
Beijing Enterprises Holdings Ltd.	00392	HKEX Main Board	29 May 1997	\$34,118,910,000	Red Chip Companies
China Merchants Bank Co., Ltd.	03968	HKEX Main Board	22 Sep 2006	\$30,613,000,000	H Share Companies
Sinofert Holdings Ltd.	00297	HKEX Main Board	30 Sep 1996	\$29,637,907,806	Red Chip Companies
China CITIC Bank Corporation Ltd.	00998	HKEX Main Board	27 Apr 2007	\$28,524,145,706	H Share Companies
CITIC International Financial Holdings Ltd.	00183	HKEX Main Board	17 Jul 1980	\$28,219,947,288	Red Chip Companies
China Insurance International Holdings Co., Ltd.	00966	HKEX Main Board	29 Jun 2000	\$25,301,873,938	Red Chip Companies
China Communications Construction Co., Ltd.	01800	HKEX Main Board	15 Dec 2006	\$23,377,200,000	H Share Companies
Lenovo Group Ltd.	00992	HKEX Main Board	14 Feb 1994	\$20,909,209,272	Red Chip Companies
China Railway Construction Corporation Ltd.	01186	HKEX Main Board	13 Mar 2008	\$19,475,656,480	H Share Companies
China Railway Group Ltd.	00390	HKEX Main Board	07 Dec 2007	\$18,512,516,000	H Share Companies
China Coal Energy Co., Ltd.	01898	HKEX Main Board	19 Dec 2006	\$18,397,850,240	H Share Companies
Guangdong Investment Ltd.	00270	HKEX Main Board	06 Oct 2009	\$14,171,192,563	Red Chip Companies
Denway Motors Ltd.	00203	HKEX Main Board	22 Feb 1993	\$14,059,966,259	Red Chip Companies
CITIC Pacific Ltd.	00267	HKEX Main Board	26 Feb 1986	\$13,290,483,910	Red Chip Companies
Shanghai Industrial Holdings Ltd.	00363	HKEX Main Board	30 May 1996	\$12,916,320,000	Red Chip Companies
COSCO Pacific Ltd.	01199	HKEX Main Board	19 Dec 1994	\$12,347,661,139	Red Chip Companies
Huaneng Power International Inc.	00902	HKEX Main Board	21 Jan 1998	\$11,518,640,848	H Share Companies
Aluminum Corporation of China Ltd.	02600	HKEX Main Board	12 Dec 2001	\$11,240,303,009	H Share Companies
China Everbright Ltd.	00165	HKEX Main Board	26 Feb 1973	\$11,001,955,497	Red Chip Companies
CNPC (Hong Kong) Ltd.	00135	HKEX Main Board	13 Mar 1973	\$10,793,321,413	Red Chip Companies
Anhui Conch Cement Co., Ltd.	00914	HKEX Main Board	21 Oct 1997	\$10,331,820,000	H Share Companies
China COSCO Holdings Co., Ltd.	01919	HKEX Main Board	30 Jun 2005	\$10,296,594,000	H Share Companies
Industrial and Commercial Bank of China (Asia) Ltd.	00349	HKEX Main Board	14 Mar 1973	\$10,159,959,040	Red Chip Companies

China Agri-Industries Holdings Ltd.	00606	HKEX Main Board	21 Mar 2007	\$9,703,547,161	Red Chip Companies
China Shipping Development Co., Ltd.	01138	HKEX Main Board	11 Nov 1994	\$9,434,880,000	H Share Companies
Datang International Power Generation Co., Ltd.	00991	HKEX Main Board	21 Mar 1997	\$9,416,524,322	H Share Companies
Yanzhou Coal Mining Co., Ltd.	01171	HKEX Main Board	01 Apr 1998	\$9,302,400,000	H Share Companies
Zijin Mining Group Co., Ltd.	02899	HKEX Main Board	23 Dec 2003	\$9,212,512,000	H Share Companies
Air China Ltd.	00753	HKEX Main Board	15 Dec 2004	\$9,119,764,563	H Share Companies
Sino-Ocean Land Holdings Ltd.	03377	HKEX Main Board	28 Sep 2007	\$8,943,974,000	Red Chip Companies
Tsingtao Brewery Co., Ltd.	00168	HKEX Main Board	15 Jul 1993	\$8,869,636,670	H Share Companies
Beijing Capital International Airport Co., Ltd.	00694	HKEX Main Board	01 Feb 2000	\$7,893,328,800	H Share Companies
China Communications Services Corporation Ltd.	00552	HKEX Main Board	08 Dec 2006	\$7,891,686,792	H Share Companies
BYD Co., Ltd.	01211	HKEX Main Board	31 Jul 2002	\$7,385,300,000	H Share Companies
Franshion Properties (China) Ltd.	00817	HKEX Main Board	17 Aug 2007	\$7,127,132,800	Red Chip Companies
PICC Property and Casualty Co., Ltd.	02328	HKEX Main Board	06 Nov 2003	\$7,119,318,800	H Share Companies
Sinotruk (Hong Kong) Ltd.	03808	HKEX Main Board	28 Nov 2007	\$7,075,868,890	Red Chip Companies
Shanghai Electric Group Co., Ltd.	02727	HKEX Main Board	28 Apr 2005	\$6,689,052,000	H Share Companies
Jiangsu Expressway Co., Ltd.	00177	HKEX Main Board	27 Jun 1997	\$6,452,160,000	H Share Companies
China Oilfield Services Ltd.	02883	HKEX Main Board	20 Nov 2002	\$6,338,938,760	H Share Companies
Sinotrans Shipping Ltd.	00368	HKEX Main Board	23 Nov 2007	\$6,227,676,000	Red Chip Companies
China Travel International Investment Hong Kong Ltd.	00308	HKEX Main Board	11 Nov 1992	\$6,094,030,412	Red Chip Companies
Dongfeng Motor Group Co., Ltd.	00489	HKEX Main Board	07 Dec 2005	\$5,997,037,200	H Share Companies
China Foods Ltd.	00506	HKEX Main Board	07 Oct 1988	\$5,582,766,712	Red Chip Companies
China South Locomotive & Rolling Stock Corporation Ltd.	01766	HKEX Main Board	21 Aug 2008	\$5,545,760,000	H Share Companies
Zhejiang Expressway Co., Ltd.	00576	HKEX Main Board	15 May 1997	\$5,133,199,110	H Share Companies
China BlueChemical Ltd.	03983	HKEX Main Board	29 Sep 2006	\$5,082,770,000	H Share Companies

Jiangxi Copper Co., Ltd.	00358	HKEX Main Board	12 Jun 1997	\$5,050,434,480	H Share Companies
China Power International Development Ltd.	02380	HKEX Main Board	15 Oct 2004	\$5,047,855,190	Red Chip Companies
Angang Steel Co., Ltd.	00347	HKEX Main Board	24 Jul 1997	\$4,972,964,000	H Share Companies
Shougang Concord International Enterprises Co., Ltd.	00697	HKEX Main Board	30 Apr 1991	\$4,456,937,713	Red Chip Companies
Guangshen Railway Co., Ltd.	00525	HKEX Main Board	14 May 1996	\$4,179,396,000	H Share Companies
Guangzhou Investment Co., Ltd.	00123	HKEX Main Board	15 Dec 1992	\$3,991,034,832	Red Chip Companies
China National Building Material Co., Ltd.	03323	HKEX Main Board	23 Mar 2006	\$3,906,020,200	H Share Companies
ZTE Corporation	00763	HKEX Main Board	09 Dec 2004	\$3,811,594,752	H Share Companies
Guangzhou R&F Properties Co. Ltd.,	02777	HKEX Main Board	14 Jul 2005	\$3,604,167,320	H Share Companies
Shenzhen International Holdings Ltd.	00152	HKEX Main Board	25 Sep 1972	\$3,594,578,679	Red Chip Companies
CITIC Resources Holdings Ltd.	01205	HKEX Main Board	08 Sep 1997	\$3,446,543,212	Red Chip Companies
Asia Satellite Telecommunications Holdings Ltd.	01135	HKEX Main Board	19 Jun 1996	\$3,364,281,300	Red Chip Companies
GZI Transport Ltd.	01052	HKEX Main Board	30 Jan 1997	\$3,346,324,590	Red Chip Companies
Sinopec Shanghai Petrochemical Co., Ltd.	00338	HKEX Main Board	26 Jul 1993	\$3,331,900,000	H Share Companies
China Shipping Container Lines Co., Ltd.	02866	HKEX Main Board	16 Jun 2004	\$3,225,860,000	H Share Companies
Shandong Weigao Group Medical Polymer Co., Ltd.	08199	HKEX Growth Enterprise Market	27 Feb 2004	\$3,196,080,000	H Share Companies
Wumart Stores Inc.	08277	HKEX Growth Enterprise Market	21 Nov 2003	\$3,090,064,800	H Share Companies
China Molybdenum Co., Ltd.	03993	HKEX Main Board	26 Apr 2007	\$3,068,105,040	H Share Companies
Sinotrans Ltd.	00598	HKEX Main Board	13 Feb 2003	\$3,002,842,080	H Share Companies
Poly (Hong Kong) Investments Ltd.	00119	HKEX Main Board	30 Aug 1973	\$2,866,570,569	Red Chip Companies
Harbin Power Equipment Co., Ltd.	01133	HKEX Main Board	16 Dec 1994	\$2,769,841,100	H Share Companies
China National Materials Co., Ltd.	01893	HKEX Main Board	20 Dec 2007	\$2,747,389,551	H Share Companies
Tianjin Port Development Holdings Ltd.	03382	HKEX Main Board	24 May 2006	\$2,680,650,000	Red Chip Companies
Shenzhen Investment Ltd.	00604	HKEX Main Board	07 Mar 1997	\$2,506,370,170	Red Chip Companies

Dongfang Electric Corporation Ltd.	01072	HKEX Main Board	06 Jun 1994	\$2,502,400,000	H Share Companies
Maanshan Iron & Steel Co., Ltd.	00323	HKEX Main Board	03 Nov 1993	\$2,408,772,700	H Share Companies
Dah Chong Hong Holdings Ltd.	01828	HKEX Main Board	17 Oct 2007	\$2,391,117,890	Red Chip Companies
China Pharmaceutical Group Ltd.	01093	HKEX Main Board	21 Jun 1994	\$2,307,186,992	Red Chip Companies
Digital China Holdings Ltd.	00861	HKEX Main Board	01 Jun 2001	\$2,271,241,771	Red Chip Companies
Tianjin Development Holdings Ltd.	00882	HKEX Main Board	10 Dec 1997	\$2,252,361,964	Red Chip Companies
Weichai Power Co., Ltd.	02338	HKEX Main Board	11 Mar 2004	\$2,251,700,000	H Share Companies
China Southern Airlines Co., Ltd.	01055	HKEX Main Board	31 Jul 1997	\$2,043,069,720	H Share Companies
China Everbright International Ltd.	00257	HKEX Main Board	02 Oct 1990	\$2,041,304,005	Red Chip Companies
China State Construction International Holdings Ltd.	03311	HKEX Main Board	08 Jul 2005	\$2,023,644,122	Red Chip Companies
Huadian Power International Corporation Ltd.	01071	HKEX Main Board	30 Jun 1999	\$2,017,749,480	H Share Companies
COSCO International Holdings Ltd.	00517	HKEX Main Board	11 Feb 1992	\$1,998,460,743	Red Chip Companies
Shenzhen Expressway Co., Ltd.	00548	HKEX Main Board	12 Mar 1997	\$1,936,025,000	H Share Companies
Beijing Enterprises Water Group Ltd.	00371	HKEX Main Board	19 Apr 1993	\$1,875,957,218	Red Chip Companies
Zhuzhou CSR Times Electric Co., Ltd.	03898	HKEX Main Board	20 Dec 2006	\$1,865,483,356	H Share Companies
Lianhua Supermarket Holdings Co., Ltd.	00980	HKEX Main Board	27 Jun 2003	\$1,863,000,000	H Share Companies
Dalian Port (PDA) Co., Ltd.	02880	HKEX Main Board	28 Apr 2006	\$1,827,672,000	H Share Companies
Inspur International Ltd.	00596	HKEX Main Board	29 Apr 2004	\$1,633,444,645	Red Chip Companies
Minmetals Resources Ltd.	01208	HKEX Main Board	15 Dec 1994	\$1,538,778,599	Red Chip Companies
Ming An (Holdings) Co. Ltd., The	01389	HKEX Main Board	22 Dec 2006	\$1,511,319,680	Red Chip Companies
China Eastern Airlines Corporation Ltd.	00670	HKEX Main Board	05 Feb 1997	\$1,472,933,000	H Share Companies
Anhui Expressway Co., Ltd.	00995	HKEX Main Board	13 Nov 1996	\$1,429,729,000	H Share Companies
CITIC 1616 Holdings Ltd.	01883	HKEX Main Board	03 Apr 2007	\$1,423,966,524	Red Chip Companies
Shenyin Wanguo (HK) Ltd.	00218	HKEX Main Board	18 Dec 1996	\$1,247,283,946	Red Chip Companies

Dynasty Fine Wines Group Ltd.	00828	HKEX Main Board	26 Jan 2005	\$1,232,550,000	Red Chip Companies
Zhaojin Mining Industry Co., Ltd.	01818	HKEX Main Board	08 Dec 2006	\$1,206,597,480	H Share Companies
Brilliance China Automotive Holdings Ltd.	01114	HKEX Main Board	22 Oct 1999	\$1,174,325,088	Red Chip Companies
Xinjiang Xinxin Mining Industry Co., Ltd.	03833	HKEX Main Board	12 Oct 2007	\$1,146,090,000	H Share Companies
TravelSky Technology Ltd.	00696	HKEX Main Board	07 Feb 2001	\$1,131,508,560	H Share Companies
Hunan Nonferrous Metals Corporation Ltd.	02626	HKEX Main Board	31 Mar 2006	\$1,110,255,040	H Share Companies
Sichuan Expressway Co., Ltd.	00107	HKEX Main Board	07 Oct 1997	\$1,056,477,600	H Share Companies
Shanghai Forte Land Co., Ltd.	02337	HKEX Main Board	06 Feb 2004	\$949,984,310	H Share Companies
Shanghai Jin Jiang Int'l Hotels (Group) Co., Ltd.	02006	HKEX Main Board	15 Dec 2006	\$946,220,000	H Share Companies
China Chengtong Development Group Ltd.	00217	HKEX Main Board	18 Dec 1996	\$937,616,950	Red Chip Companies
Great Wall Motor Co., Ltd.	02333	HKEX Main Board	15 Dec 2003	\$933,994,720	H Share Companies
Silver Grant International Industries Ltd.	00171	HKEX Main Board	16 Nov 2009	\$928,561,902	Red Chip Companies
TCL Multimedia Technology Holdings Ltd.	01070	HKEX Main Board	26 Nov 1999	\$899,507,342	Red Chip Companies
AviChina Industry & Technology Co., Ltd.	02357	HKEX Main Board	30 Oct 2003	\$873,496,260	H Share Companies
Guangzhou Shipyard International Co., Ltd.	00317	HKEX Main Board	06 Aug 1993	\$832,635,420	H Share Companies
Shandong Chenming Paper Holdings Ltd.	01812	HKEX Main Board	18 Jun 2008	\$806,016,200	H Share Companies
Qingling Motors Co., Ltd.	01122	HKEX Main Board	17 Aug 1994	\$805,123,712	H Share Companies
Sinopec Kantons Holdings Ltd.	00934	HKEX Main Board	25 Jun 1999	\$777,622,500	Red Chip Companies
China Aerospace International Holdings Ltd.	00031	HKEX Main Board	25 Aug 1981	\$771,271,165	Red Chip Companies
Kingway Brewery Holdings Ltd.	00124	HKEX Main Board	08 Aug 1997	\$761,633,898	Red Chip Companies
Sinopec Yizheng Chemical Fibre Co., Ltd.	01033	HKEX Main Board	29 Mar 1994	\$742,000,000	H Share Companies
China Energine International (Holdings) Ltd.	01185	HKEX Main Board	11 Aug 1997	\$724,799,134	Red Chip Companies
Beijing Capital Land Ltd.	02868	HKEX Main Board	19 Jun 2003	\$714,529,200	H Share Companies
Xiamen International Port Co., Ltd.	03378	HKEX Main Board	19 Dec 2005	\$651,222,000	H Share Companies

Weiqiao Textile Co., Ltd.	02698	HKEX Main Board	24 Sep 2003	\$645,245,640	H Share Companies
Chu Kong Shipping Development Co., Ltd.	00560	HKEX Main Board	23 May 1997	\$621,000,000	Red Chip Companies
Shandong Molong Petroleum Machinery Co., Ltd.	00568	HKEX Main Board	07 Feb 2007	\$601,897,040	H Share Companies
Beijing Development (Hong Kong) Ltd.	00154	HKEX Main Board	06 Jan 2003	\$582,487,278	Red Chip Companies
Min Xin Holdings Ltd.	00222	HKEX Main Board	28 Jun 1982	\$574,285,820	Red Chip Companies
China Resources Logic Ltd.	01193	HKEX Main Board	07 Nov 1994	\$574,253,184	Red Chip Companies
Sichuan Xinhua Winshare Chainstore Co., Ltd.	00811	HKEX Main Board	30 May 2007	\$561,260,117	H Share Companies
Chongqing Iron & Steel Co., Ltd.	01053	HKEX Main Board	17 Oct 1997	\$543,508,472	H Share Companies
CATIC International Holdings Ltd.	00232	HKEX Main Board	12 Dec 1991	\$540,739,239	Red Chip Companies
TCL Communication Technology Holdings Ltd.	02618	HKEX Main Board	27 Sep 2004	\$536,287,403	Red Chip Companies
Shougang Concord Technology Holdings Ltd.	00521	HKEX Main Board	23 Dec 1988	\$535,225,370	Red Chip Companies
Beijing North Star Co., Ltd.	00588	HKEX Main Board	14 May 1997	\$530,265,000	H Share Companies
Guangnan (Holdings) Ltd.	01203	HKEX Main Board	09 Dec 1994	\$525,249,905	Red Chip Companies
Shougang Concord Century Holdings Ltd.	00103	HKEX Main Board	09 Apr 1992	\$495,429,837	Red Chip Companies
Yantai North Andre Juice Co Ltd.	08259	HKEX Growth Enterprise Market	22 Apr 2003	\$492,849,280	H Share Companies
Shanghai Prime Machinery Co., Ltd.	02345	HKEX Main Board	27 Apr 2006	\$486,214,400	H Share Companies
Stone Group Holdings Ltd.	00409	HKEX Main Board	16 Aug 1993	\$482,516,412	Red Chip Companies
CATIC Shenzhen Holdings Ltd.	00161	HKEX Main Board	29 Sep 1997	\$478,607,998	H Share Companies
Hainan Meilan International Airport Co., Ltd.	00357	HKEX Main Board	18 Nov 2002	\$471,979,040	H Share Companies
Yunnan Enterprises Holdings Ltd.	00455	HKEX Main Board	30 Mar 1992	\$467,529,540	Red Chip Companies
China Glass Holdings Ltd.	03300	HKEX Main Board	23 Jun 2005	\$449,280,000	Red Chip Companies
CITIC 21CN Co., Ltd.	00241	HKEX Main Board	06 Jul 1972	\$446,144,356	Red Chip Companies
Chongqing Machinery & Electric Co., Ltd.	02722	HKEX Main Board	13 Jun 2008	\$429,073,113	H Share Companies
Minmetals Land Ltd.	00230	HKEX Main Board	20 Dec 1991	\$423,256,078	Red Chip Companies

Tong Ren Tang Technologies Co., Ltd.	08069	HKEX Growth Enterprise Market	31 Oct 2000	\$420,009,200	H Share Companies
Rivera (Holdings) Ltd.	00281	HKEX Main Board	23 Jan 1973	\$417,367,442	Red Chip Companies
Guangzhou Pharmaceutical Co., Ltd.	00874	HKEX Main Board	30 Oct 1997	\$400,218,000	H Share Companies
Shandong Luoxin Pharmacy Stock Co., Ltd.	08058	HKEX Growth Enterprise Market	09 Dec 2005	\$398,235,200	H Share Companies
China Resources Microelectronics Ltd.	00597	HKEX Main Board	13 Aug 2004	\$392,586,988	Red Chip Companies
Zhejiang Glass Co., Ltd.	00739	HKEX Main Board	10 Dec 2001	\$381,149,010	H Share Companies
First Tractor Co., Ltd.	00038	HKEX Main Board	23 Jun 1997	\$369,830,800	H Share Companies
Shenzhen Dongjiang Environmental Co., Ltd.	08230	HKEX Growth Enterprise Market	29 Jan 2003	\$343,347,000	H Share Companies
Lingbao Gold Co., Ltd.	03330	HKEX Main Board	12 Jan 2006	\$341,865,100	H Share Companies
Jiuzhou Development Co., Ltd.	00908	HKEX Main Board	26 May 1998	\$335,580,000	Red Chip Companies
Beijing Jingkelong Co., Ltd.	00814	HKEX Main Board	26 Feb 2008	\$327,888,000	H Share Companies
China Electronics Corporation Holdings Co., Ltd.	00085	HKEX Main Board	25 Jul 1997	\$319,650,200	Red Chip Companies
China Information Technology Development Ltd.	08178	HKEX Growth Enterprise Market	11 Dec 2001	\$318,250,412	Red Chip Companies
Baoye Group Co., Ltd.	02355	HKEX Main Board	30 Jun 2003	\$312,221,952	H Share Companies
EVOC Intelligent Technology Co., Ltd.	08285	HKEX Growth Enterprise Market	10 Oct 2003	\$283,683,840	H Share Companies
Shougang Concord Grand (Group) Ltd.	00730	HKEX Main Board	08 Aug 1991	\$275,182,800	Red Chip Companies
Zhengzhou Gas Co., Ltd.	03928	HKEX Main Board	29 Jun 2007	\$264,316,800	H Share Companies
APT Satellite Holdings Ltd.	01045	HKEX Main Board	18 Dec 1996	\$256,224,300	Red Chip Companies
Tianjin Capital Environmental Protection Co., Ltd.	01065	HKEX Main Board	17 May 1994	\$255,000,000	H Share Companies
Tianjin Tianlian Public Utilities Co., Ltd.	08290	HKEX Growth Enterprise Market	09 Jan 2004	\$247,529,700	H Share Companies
Nanjing Sample Technology Co., Ltd.	08287	HKEX Growth Enterprise Market	09 Jun 2004	\$244,800,000	H Share Companies
Wing Shan International Ltd.	00570	HKEX Main Board	07 Apr 1993	\$236,827,660	Red Chip Companies
Anhui Tianda Oil Pipe Co., Ltd.	00839	HKEX Main Board	24 Dec 2007	\$228,733,050	H Share Companies
Shenji Group Kunming Machine Tool Co., Ltd.	00300	HKEX Main Board	07 Dec 1993	\$225,431,700	H Share Companies

Great Wall Technology Co., Ltd.	00074	HKEX Main Board	05 Aug 1999	\$208,781,120	H Share Companies
Shanghai Tonva Petrochemical Co., Ltd.	08251	HKEX Growth Enterprise Market	13 Jul 2005	\$189,318,850	H Share Companies
Guangdong Nan Yue Logistics Co., Ltd.	03399	HKEX Main Board	26 Oct 2005	\$186,300,000	H Share Companies
Overseas Chinese Town (Asia) Holdings Ltd.	03366	HKEX Main Board	02 Nov 2005	\$168,699,300	Red Chip Companies
Shenzhen Neptunus Interlong Bio-Technique Co., Ltd.	08329	HKEX Growth Enterprise Market	12 Sep 2005	\$165,669,000	H Share Companies
Changmao Biochemical Engineering Co., Ltd.	08208	HKEX Growth Enterprise Market	28 Jun 2002	\$165,330,000	H Share Companies
Nanjing Panda Electronic Co., Ltd.	00553	HKEX Main Board	02 May 1996	\$147,620,000	H Share Companies
Advanced Semiconductor Manufacturing Corporation Ltd.	03355	HKEX Main Board	07 Apr 2006	\$144,810,684	H Share Companies
Founder Holdings Ltd.	00418	HKEX Main Board	21 Dec 1995	\$141,287,487	Red Chip Companies
Yue Da Mining Holdings Ltd.	00629	HKEX Main Board	29 Nov 2001	\$131,855,580	Red Chip Companies
Sanmenxia Tianyuan Aluminum Co., Ltd.	08253	HKEX Growth Enterprise Market	13 Jul 2004	\$126,007,200	H Share Companies
Shandong Xinhua Pharmaceutical Co., Ltd.	00719	HKEX Main Board	31 Dec 1996	\$123,000,000	H Share Companies
IRICO Group Electronics Co., Ltd.	00438	HKEX Main Board	20 Dec 2004	\$121,323,500	H Share Companies
Global Digital Creations Holdings Ltd.	08271	HKEX Growth Enterprise Market	04 Aug 2003	\$115,276,853	Red Chip Companies
Guangdong Tannery Ltd.	01058	HKEX Main Board	16 Dec 1996	\$112,875,840	Red Chip Companies
Capinfo Co., Ltd.	08157	HKEX Growth Enterprise Market	21 Dec 2001	\$106,106,226	H Share Companies
Jingwei Textile Machinery Co., Ltd.	00350	HKEX Main Board	02 Feb 1996	\$104,864,000	H Share Companies
Beijing Media Corporation Ltd.	01000	HKEX Main Board	22 Dec 2004	\$103,213,880	H Share Companies
Fujian Holdings Ltd.	00181	HKEX Main Board	22 Feb 1973	\$101,228,200	Red Chip Companies
EC-Founder (Holdings) Co., Ltd.	00618	HKEX Main Board	07 Oct 1991	\$94,015,273	Red Chip Companies
Northeast Electric Development Co., Ltd.	00042	HKEX Main Board	06 Jul 1995	\$86,413,250	H Share Companies
Tianjin Binhai Teda Logistics (Group) Corporation Ltd.	08348	HKEX Growth Enterprise Market	30 Apr 2008	\$83,506,720	H Share Companies
Shanghai Fudan Microelectronics Co., Ltd.	08102	HKEX Growth Enterprise Market	04 Aug 2000	\$81,180,550	H Share Companies
AKM Industrial Co., Ltd.	08298	HKEX Growth Enterprise Market	18 Aug 2004	\$81,000,000	Red Chip Companies

Xinjiang Tianye Water Saving Irrigation System Co., Ltd.	00840	HKEX Main Board	24 Jan 2008	\$80,960,000	H Share Companies
Zhejiang Shibao Co., Ltd.	08331	HKEX Growth Enterprise Market	16 May 2006	\$76,308,320	H Share Companies
Powerleader Science & Technology Group Ltd.	08236	HKEX Growth Enterprise Market	12 Dec 2002	\$75,937,500	H Share Companies
Beijing Beida Jade Bird Universal Sci-Tech Co., Ltd.	08095	HKEX Growth Enterprise Market	27 Jul 2000	\$72,235,200	H Share Companies
Chengdu PUTIAN Telecommunications Cable Co., Ltd.	01202	HKEX Main Board	13 Dec 1994	\$68,800,000	H Share Companies
Launch Tech Co., Ltd.	08196	HKEX Growth Enterprise Market	07 Oct 2002	\$68,400,000	H Share Companies
Changan Minsheng APLL Logistics Co., Ltd.	08217	HKEX Growth Enterprise Market	23 Feb 2006	\$63,250,000	H Share Companies
Biosino Bio-Technology and Science Incorporation	08247	HKEX Growth Enterprise Market	27 Feb 2006	\$60,060,000	H Share Companies
Shanxi Changcheng Microlight Equipment Co., Ltd.	08286	HKEX Growth Enterprise Market	18 May 2004	\$55,000,000	H Share Companies
Beiren Printing Machinery Holdings Ltd.	00187	HKEX Main Board	06 Aug 1993	\$49,000,000	H Share Companies
Shanghai Fudan-Zhangjiang Bio-Pharmaceutical Co., Ltd.	08231	HKEX Growth Enterprise Market	13 Aug 2002	\$47,520,000	H Share Companies
Jiangsu Nandasoft Co., Ltd.	08045	HKEX Growth Enterprise Market	24 Apr 2001	\$40,950,000	H Share Companies
Dahe Media Co., Ltd.	08243	HKEX Growth Enterprise Market	13 Nov 2003	\$40,500,000	H Share Companies
Zhejiang Yonglong Enterprises Co., Ltd.	08211	HKEX Growth Enterprise Market	08 Nov 2002	\$36,613,500	H Share Companies
Tianjin TEDA Biomedical Engineering Co., Ltd.	08189	HKEX Growth Enterprise Market	18 Jun 2002	\$34,755,000	H Share Companies
Jilin Qifeng Chemical Fiber Co., Ltd.	00549	HKEX Main Board	21 Jun 2006	\$34,563,375	H Share Companies
Jilin Province Huinan Changlong Bio-pharmacy Co., Ltd.	08049	HKEX Growth Enterprise Market	24 May 2001	\$34,500,000	H Share Companies
Shanghai Jiada Withub Information Industrial Co., Ltd.	08205	HKEX Growth Enterprise Market	31 Jul 2002	\$30,360,000	H Share Companies
Shenzhen Mingwah Aohan High Technology Corp., Ltd.	08301	HKEX Growth Enterprise Market	07 Jul 2004	\$23,023,000	H Share Companies
CCID Consulting Co., Ltd.	08235	HKEX Growth Enterprise Market	12 Dec 2002	\$20,064,000	H Share Companies
Shaanxi Northwest New Technology Industry Co., Ltd.	08258	HKEX Growth Enterprise Market	03 Jul 2003	\$19,550,000	H Share Companies
Xi'an Haitian Antenna Technologies Co., Ltd.	08227	HKEX Growth Enterprise Market	05 Nov 2003	\$14,558,824	H Share Companies
Zhejiang Prospect Co., Ltd.	08273	HKEX Growth Enterprise Market	18 Feb 2004	\$10,350,000	H Share Companies
Zheda Lande Scitech Ltd.	08106	HKEX Growth Enterprise Market	03 May 2002	\$9,530,625	H Share Companies

Northeast Tiger Pharmaceutical Co., Ltd.	08197	HKEX Growth Enterprise Market	28 Feb 2002	\$8,901,000	H Share Companies
Ningbo Yidong Electronic Co., Ltd.	08249	HKEX Growth Enterprise Market	14 Nov 2003	\$5,200,000	H Share Companies
Luoyang Glass Co., Ltd.	01108	HKEX Main Board	08 Jul 1994	Suspended over 1 year	H Share Companies
Hisense Kelon Electrical Holdings Co., Ltd.	00921	HKEX Main Board	23 Jul 1996	Suspended over 1 year	H Share Companies
Shenyang Public Utility Holdings Co., Ltd.	00747	HKEX Main Board	16 Dec 1999	Suspended over 1 year	H Share Companies
Mudan Automobile Shares Co., Ltd.	08188	HKEX Growth Enterprise Market	18 Dec 2001	Suspended over 1 year	H Share Companies
Shanghai Qingpu Fire-Fighting Equipment Co., Ltd.	08115	HKEX Growth Enterprise Market	30 Jun 2004	Suspended over 1 year	H Share Companies
China Data Broadcasting Holdings Ltd.	08016	HKEX Growth Enterprise Market	24 Jan 2000	Suspended over 1 year	Red Chip Companies

Source: data collected from the official website of Hong Kong Stock Exchange in October 2008, see Hong Kong Stock Exchange, Statistics & Research, Securities Market Statistics: China Dimension, available at: <http://www.hkex.com.hk/eng/stat/smstat/chidimen/chidimen.htm>, accessed October 27, 2008.

III. CHINESE COMPANIES LISTED ON NASDAQ STOCK EXCHANGE

(rated according to their market capitalisation)

English Name of Company	Ticker Symbol	Listed Stock Exchange	Market Capitalisation (descending US\$)*	Listing Date
Baidu.com, Inc.	BIDU	NASDAQ Global Select Market	\$3,897,516,960	05 Aug 2005
Netease.com Inc.	NTES	NASDAQ Global Select Market	\$2,309,309,600	30 Jun 2000
Shanda Interactive Entertainment Ltd.	SNDA	NASDAQ Global Select Market	\$1,816,300,000	12 May 2004
Sohu.com Inc.	SOHU	NASDAQ Global Select Market	\$1,716,800,800	12 Jul 2000
SINA Corporation	SINA	NASDAQ Global Select Market	\$1,454,189,150	13 Apr 2000
Ctrip.com International Ltd.	CTRP	NASDAQ Global Select Market	\$1,343,457,240	09 Dec 2003
Focus Media Holding	FMCN	NASDAQ Global Market	\$1,008,812,790	13 Jul 2005
Perfect World Co., Ltd.	PWRD	NASDAQ Global Market	\$771,780,380	26 Jul 2007
AsiaInfo Holdings Inc.	ASIA	NASDAQ Global Market	\$566,370,930	03 Mar 2000
JA Solar Holdings, Co., Ltd.	JASO	NASDAQ Global Market	\$557,225,160	07 Feb 2007
China Medical Technologies Inc.	CMED	NASDAQ Global Select Market	\$513,059,040	10 Aug 2005
VisionChina Media Inc.	VISN	NASDAQ Global Market	\$387,070,420	06 Dec 2007
AirMedia Group Inc.	AMCN	NASDAQ Global Market	\$366,921,500	07 Nov 2007
Home Inns & Hotels Management Inc.	HMIN	NASDAQ Global Market	\$350,110,390	26 Oct 2006
CNinsure Inc.	CISG	NASDAQ Global Market	\$339,922,750	31 Oct 2007
The9 Limited	NCTY	NASDAQ Global Market	\$322,716,300	15 Dec 2004
Himax Technologies, Inc.	HIMX	NASDAQ Global Select Market	\$244,359,680	31 Mar 2006
Solarfun Power Holdings Co., Ltd.	SOLF	NASDAQ Global Market	\$238,083,720	20 Dec 2006

China Natural Resources Inc.	CHNR	NASDAQ Capital Market	\$212,553,000	07Aug 1995
UTStarcom Inc.	UTSI	NASDAQ Global Select Market	\$194,348,000	02 Mar 2000
51job Inc.	JOBS	NASDAQ Global Select Market	\$192,733,200	24 Sep 2004
China Finance Online Co., Ltd.	JRJC	NASDAQ Global Market	\$156,291,120	15 Oct 2004
China Sunergy Co., Ltd.	CSUN	NASDAQ Global Market	\$138,442,500	17 May 2007
Jinpan International Ltd.	JST	NASDAQ Global Select Market	\$130,300,500	09 Sep 2008
China BAK Battery Inc.	CBAK	NASDAQ Global Market	\$129,189,760	31 May 2006
3SBio Inc.	SSRX	NASDAQ Global Market	\$127,948,390	07 Feb 2007
Actions Semiconductor Co., Ltd.	ACTS	NASDAQ Global Market	\$123,840,000	30 Nov 2005
Kongzhong Corp.	KONG	NASDAQ Global Market	\$119,545,440	09 Jul 2004
Cogo Group Inc.	COGO	NASDAQ Global Select Market	\$114,593,940	31 Jan 2005
Silicon Motion Technology Corporation	SIMO	NASDAQ Global Select Market	\$93,674,760	30 Jun 2005
CDC Corp.	CHINA	NASDAQ Global Market	\$89,939,640	13 Jul 1999
O2Micro International Limited	OIIM	NASDAQ Global Select Market	\$89,621,950	28 Nov 2005
China TransInfo Technology Corp.	CTFO	NASDAQ Capital Market	\$85,419,950	14 May 2007
eLong Inc.	LONG	NASDAQ Global Market	\$78,682,800	28 Oct 2004
China Automotive Systems Inc.	CAAS	NASDAQ Capital Market	\$73,933,420	24 Aug 2004
Qiao Xing Universal Telephone Inc.	XING	NASDAQ Global Market	\$67,159,330	19 Feb 1999
Vimicro International Corp.	VIMC	NASDAQ Global Market	\$61,663,000	15 Nov 2005
Xinhua Finance Media Limited	XFML	NASDAQ Global Market	\$41,732,740	09 Mar 2007
Ninetowns Internet Technology Group Company Limited	NINE	NASDAQ Global Market	\$40,087,040	03 Dec 2004
China Techfaith Wireless Communication Technology Ltd.	CNTF	NASDAQ Global Market	\$39,421,200	05 May 2005
SORL Auto Parts Inc.	SORL	NASDAQ Global Market	\$38,385,900	18 Apr 2005
Linktone Ltd.	LTON	NASDAQ Global Market	\$37,012,113.60	04 Mar 2004

Hurray! Holding Co., Ltd.	HRAY	NASDAQ Global Market	\$34,998,180	04 Feb 2005
Spreadtrum Communications Inc.	SPRD	NASDAQ Global Market	\$33,221,560	27 Jun 2007
China Technology Development Group Corp.	CTDC	NASDAQ Capital Market	\$22,694,240	13 Dec 1996
China Greentech Corp., Ltd.	GRRF	NASDAQ Global Market	\$20,387,290	30 Mar 2006
Fuwei Films (Holdings) Co., Ltd.	FFHL	NASDAQ Global Market	\$11,756,700	19 Dec 2006
Telestone Technologies Corporation	TSTC	NASDAQ Global Market	\$10,925,250	17 May 2005
e-Future Information Technology Inc.	EFUT	NASDAQ Capital Market	\$10,509,660	31 Oct 2006

Source: data collected from the official website of NASDAQ Stock Exchange in October 2008, see NASDAQ Stock Exchange, Company List (Exchange: NASDAQ - All NASDAQ Securities / Region: Asia - China), available at: <http://www.nasdaq.com/screening/companies-by-industry.aspx?industry=ALL&exchange=NASDAQ®ion=Asia&country=China>, accessed October 27, 2008.

* The market capitalisation of the Chinese companies showed in this table was considerably smaller than the official figures issued by the Chinese government, since NASDAQ probably adjusted for these by calculating on a free float basis, i.e., the market capitalisation that NASDAQ used is the value of the publicly tradable part of the Chinese company.

IV. CHINESE COMPANIES LISTED ON LONDON STOCK EXCHANGE (LSE)

(rated according to their market capitalisation)

English Name of Company	Ticker Symbol	Market Capitalisation (descending UK£)	Sub Sector	Listed Stock Exchange	Listing Date	Country of Incorporation
China Petroleum & Chemical Corporation	SNP	£8,825,954,184	Integrated Oil & Gas	LSE International Main Market	18 Oct 2000	China
Datang International Power Generation	DAT	£1,076,805,358	Electricity	LSE International Main Market	20 Mar 1997	China
Air China	AIRC	£764,181,714	Airlines	LSE International Main Market	15 Dec 2004	China
Zhejiang Expressway Company	ZHEH	£538,060,026	Transportation Services	LSE International Main Market	05 May 2000	China
Green Dragon Gas Ltd.	GDG	£460,270,000	Coal	LSE Alternative Investment Market (AIM)	17 Aug 2006	Cayman Islands
ARC Capital Holdings Ltd.	ARCH	£264,610,000	Equity Investment Instruments	LSE AIM	26 Jun 2006	Cayman Islands
ReneSola Ltd.	SOLA	£264,580,000	Electrical Components & Equipment	LSE AIM	08 Aug 2006	British Virgin Islands
Pacific Alliance Asia Opportunity Fund Ltd.	PAX	£247,520,000	Equity Investment Instruments	LSE AIM	21 Sep 2006	Cayman Islands
Pacific Alliance China Land Ltd.	PACL	£135,900,000	Real Estate Holding & Development	LSE AIM	22 Nov 2007	Cayman Islands
Zhejiang Southeast Electric Power Company	ZSED	£120,144,422	Electricity	LSE International Main Market	23 Sep 1997	China
China Central Properties Ltd.	CCPL	£107,560,000	Real Estate Holding & Development	LSE AIM	13 Jun 2007	U.K.
Asian Citrus Holdings	ACHL	£103,730,000	Farming & Fishing	LSE AIM	03 Aug 2005	Bermuda
RCG Holdings Ltd.	RCG	£101,320,000	Electronic Equipment	LSE AIM	02 Jul 2004	Bermuda
China Real Estate Opportunities Ltd.	CREO	£85,730,000	Real Estate Holding & Development	LSE AIM	11 Jul 2007	U.K.
Macau Property Opportunities Fund Ltd.	MPO	£76,650,000	Real Estate Holding & Development	LSE AIM	05 Jun 2006	U.K.
Asian Growth Properties	AGP	£75,340,000	Real Estate Holding & Development	LSE AIM	05 Oct 2006	British Virgin Islands
Cosmedia Group Holdings Ltd.	CGHL	£65,130,000	Media Agencies	LSE AIM	28 Dec 2006	Cayman Islands

China Medical System Holdings Ltd.	CMSH	£55,040,000	Pharmaceuticals	LSE AIM	26 Jun 2007	Cayman Islands
Griffin Mining	GFM	£50,330,000	General Mining	LSE AIM	30 Jun 1997	Bermuda
Vision Opportunity China Fund Ltd.	VOC	£49,780,000	Equity Investment Instruments	LSE AIM	28 Nov 2007	U.K.
Hutchison China Meditech Ltd.	HCM	£39,180,000	Pharmaceuticals	LSE AIM	19 May 2006	Cayman Islands
West China Cement Ltd.	WCC	£38,470,000	Building Materials & Fixtures	LSE AIM	04 Dec 2006	U.K.
Jetion Solar Holdings Ltd.	JHL	£37,850,000	Electrical Components & Equipment	LSE AIM	06 Jul 2007	British Virgin Islands
Natsun Holdings Ltd.	NTS	£35,420,000	Clothing & Accessories	LSE AIM	24 Dec 2007	Hong Kong
Origo Resources Partners Ltd.	ORP	£31,740,000	Equity Investment Instruments	LSE AIM	14 Dec 2007	U.K.
Speymill Macau Property Co., Plc.	MCAU	£29,520,000	Real Estate Holding & Development	LSE AIM	17 Nov 2006	U.K.
Prosperity Minerals Holdings Ltd.	PMHL	£29,160,000	Building Materials & Fixtures	LSE AIM	24 May 2006	U.K.
Origo Sino-India Plc.	OSI	£25,050,000	Specialty Finance	LSE AIM	21 Dec 2006	U.K.
ET-China.com International Holdings Ltd.	ETC	£23,730,000	Travel & Tourism	LSE AIM	03 Aug 2007	U.K.
China Shoto	CHNS	£22,080,000	Electrical Components & Equipment	LSE AIM	06 Dec 2005	U.K.
Bluestar Secutech Inc.	BSST	£21,480,000	Electronic Equipment	LSE AIM	18 Jun 2007	British Virgin Islands
China Goldmines Plc.	CGM	£17,210,000	Gold Mining	LSE AIM	07 Feb 2006	U.K.
Haike Chemical Group Ltd.	HAIK	£17,070,000	Exploration & Production	LSE AIM	14 Feb 2007	Cayman Islands
China Food Company Plc.	CFC	£16,270,000	Farming & Fishing	LSE AIM	10 Dec 2007	U.K.
Yangtze China Investment Ltd.	YCI	£14,770,000	Equity Investment Instruments	LSE AIM	14 May 2008	Cayman Islands
Sorbic International Plc.	SORB	£12,700,000	Food Products	LSE AIM	30 Sep 2008	U.K.
Geong International Ltd.	GNG	£12,140,000	Software	LSE AIM	23 Jun 2006	U.K.
FoaMasters International Ltd.	FOAM	£10,440,000	Commodity Chemicals	LSE AIM	05 Dec 2007	U.K.
London Asia Chinese Private Equity	LCP	£10,180,000	Equity Investment Instruments	LSE AIM	15 Mar 2006	U.K.
GMO Ltd.	GMO	£9,690,000	Mobile Telecommunications	LSE AIM	06 Sep 2006	U.K.
Leyshon Resources Ltd.	LRL	£9,160,000	Gold Mining	LSE AIM	26 Oct 2005	Australia

Sinosoft Technology Plc.	SFT	£8,280,000	Software	LSE AIM	06 Mar 2006	U.K.
Walcom Group Ltd.	WALG	£7,570,000	Food Products	LSE AIM	21 Dec 2006	British Virgin Islands
Taihua Plc.	TAIH	£7,550,000	Biotechnology	LSE AIM	14 Dec 2006	U.K.
Pixel Interactive Media Ltd.	PIXL	£7,510,000	Media Agencies	LSE AIM	10 Jul 2006	U.K.
China Eastsea Business Software	CESG	£6,480,000	Software	LSE AIM	24 Jan 2008	U.K.
Asia Distribution Solutions Ltd.	ADSL	£6,390,000	Soft Drinks	LSE AIM	07 Nov 2007	Cayman Islands
Arko Holdings Plc.	AKO	£5,440,000	Electricity	LSE AIM	13 May 2002	U.K.
EBT Mobile China	EBT	£5,000,000	Specialty Retailers	LSE AIM	08 Sep 2005	U.K.
Upstream Marketing and Communications Inc.	UPS	£3,780,000	Media Agencies	LSE AIM	16 Oct 2006	Cayman Islands
China Biodiesel International Holdings Company Ltd.	CBI	£2,950,000	Specialty Chemicals	LSE AIM	30 Jun 2006	British Virgin Islands
Central China Goldfields	GGG	£2,910,000	Gold Mining	LSE AIM	30 Mar 2005	U.K.
Bodisen Biotech, Inc.	BODI	£2,840,000	Specialty Chemicals	LSE AIM	06 Feb 2006	U.S.A.
Univision Engineering Ltd.	UVEL	£2,780,000	Electronic Equipment	LSE AIM	16 Dec 2005	Hong Kong
China Western Investments Plc.	CHWI	£2,730,000	Real Estate Holding & Development	LSE AIM	15 Jun 2004	U.K.
ZTC Telecommunications Plc.	ZTC	£2,720,000	Telecommunications Equipment	LSE AIM	21 Mar 2007	U.K.
SovGEM Ltd.	SOV	£2,510,000	Specialty Finance	LSE AIM	23 Nov 2004	U.K.
NetDimensions (Holdings) Ltd.	NETD	£1,800,000	Software	LSE AIM	02 May 2007	Cayman Islands
Sweet China Plc.	SWC	£1,330,000	Specialty Finance	LSE AIM	31 Mar 2005	U.K.
China Wonder	CWO	£1,080,000	Industrial Machinery	LSE AIM	01 Oct 2004	U.K.
LED International Holdings Ltd.	LED	£780,000	Electronic Equipment	LSE AIM	23 Oct 2006	Hong Kong
PAQ International Holdings Ltd.	PAQ	£720,000	Industrial Suppliers	LSE AIM	25 Feb 2008	Cayman Islands
Universal Coal Plc.	UCL	0.00	General Mining	LSE AIM	01 Jul 2005	U.K.
Jarlway Holdings Plc.	JWY	0.00	Commercial Vehicles & Trucks	LSE AIM	18 Jul 2005	U.K.

CEC Unet Plc.	CECU	0.00	Specialty Finance	LSE AIM	06 Jul 2006	Republic of Ireland
Tinci Holdings Ltd.	TNCI	0.00	Industrial Machinery	LSE AIM	31 Jul 2006	Hong Kong
Canton Property Investment Ltd.	CPIL	0.00	Real Estate Holding & Development	LSE AIM	16 Aug 2007	British Virgin Islands

Source: data collected from the official website of London Stock Exchange in October 2008, see London Stock Exchange, Statistics, Historic: Company Files, available at: <http://www.londonstockexchange.com/statistics/historic/company-files/company-files.htm>, accessed October 27, 2008.

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